

FLORIDA SOUTHERN COLLEGE

COMPREHENSIVE
TITLE IX TRAINING

TITLE  SOLUTIONS, LLC





WELCOME

Training Instructors

Adrienne
Mathis

Executive Director
Title IX Solutions, LLC



Susanna
Murphy

Advisor and Investigator
Title IX Solutions, LLC



Training Agenda

Comprehensive Title IX Training

8:30 a.m. - 8:45 a.m. | Welcome

8:45 a.m. - 9:20 a.m. | Title IX Sexual Harassment

9:20 a.m. - 9:30 a.m. | Break

9:30 a.m. - 10:45 a.m. | Responding to Incidents of Sexual Harassment

10:45 a.m. - 11:00 a.m. | Break

11:00 a.m. - 12:30 p.m. | Overview of the Title IX Grievance Process

Return tomorrow at 2:00 pm for Advisor Training!



Title IX Sexual Harassment

What is Title IX?



Title IX of the Education Amendments of 1972

“

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance[.]”

”

Scope of Title IX

Applies to state and local educational agencies that receive federal funding:

- Public or Private Preschools, Elementary and Secondary Schools
 - Districts & Charter Schools
- Vocational, Professional and Higher Education Institutions
- Libraries & Museums

Some key issue areas addressed under Title IX:



Recruitment,
Admissions
& Counseling



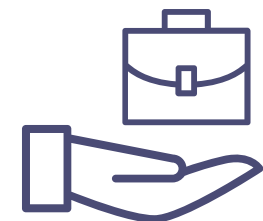
Athletics



Treatment of
LGBTQI+
Students



Financial
Assistance



Employment



Sex-Based
Harassment

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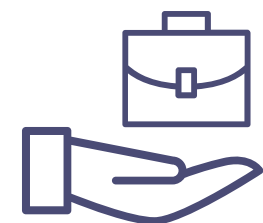
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Sex-Based
Harassment

Evolution of Title IX

**JUNE 23,
1972**

**TITLE IX
SIGNED INTO
LAW**

1977

**ALEXANDER
V.
YALE**

**1980s - 1990s
U.S. SUPREME COURT
DECISIONS**

APRIL 4, 2011

**DEAR
COLLEAGUE
LETTER
ISSUED**

MAY 7, 2022

**"FINAL" TITLE
IX RULE
RELEASED**

**JUNE 23,
2022**

**CHANGES TO
TITLE IX
PROPOSED**

Evolution of Title IX

JUNE 23, 1972

- Title IX is signed into law
- Follows the Civil Rights Act of 1964 to address discrimination based on sex
- Implementation requires designation of Title IX Coordinator, public grievance procedures, and compliance-oriented district staff
- Most well-known for its impact on:



Admissions



Academic
Opportunities



Athletics

Evolution of Title IX

1977

1980s - 1990s

- Alexander v. Yale
 - First lawsuit using Title IX to argue sexual harassment as discrimination
- U.S. Supreme Court Decisions
 - Sexual harassment and sexual assault = sex discrimination

Evolution of Title IX

APRIL 4, 2011

- U.S. Department of Education's Office for Civil Rights releases "Dear Colleague Letter"
- States sexual harassment of students, including sexual violence, interferes with students' rights to their education free from discrimination and is therefore prohibited by Title IX
- Explains schools' responsibility to take immediate and effective steps to end sexual harassment and violence (references OCR's 2001 Guidance)

Evolution of Title IX

MAY 7, 2020

- DOE releases the "final regulations" governing campus sexual assault under Title IX
- Followed a formal notice-and-comment process
- Explicitly defines sexual harassment and procedural requirements for educational institutions
- Has the "force of law" behind it (unlike the Dear Colleague Letter)
- Currently in effect for primary, secondary, and postsecondary schools

Evolution of Title IX

JUNE 23, 2022

- DOE releases proposed changes to Title IX
- Would modify procedural requirements and expand protections
- New Title IX rule will likely be released in late 2023 or early 2024

Prohibited Conduct Under Title IX



Sex-based Discrimination

Equal opportunities in:

- Recruitment
- Admissions
- Education
- Scholarships
- Pay
- Athletics
- Extracurriculars

Prohibited Conduct Under Title IX



Sex-based Discrimination

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Sexual Harassment

Conduct including:

- Quid Pro Quo
- Severe, pervasive, and objectively offensive conduct
- Sexual assault
- Dating violence
- Domestic violence
- Stalking

Prohibited Conduct Under Title IX



Sex-based Discrimination

Equal opportunities in:

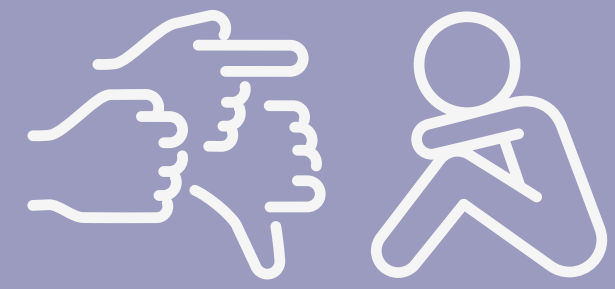
- Recruitment
- Admissions
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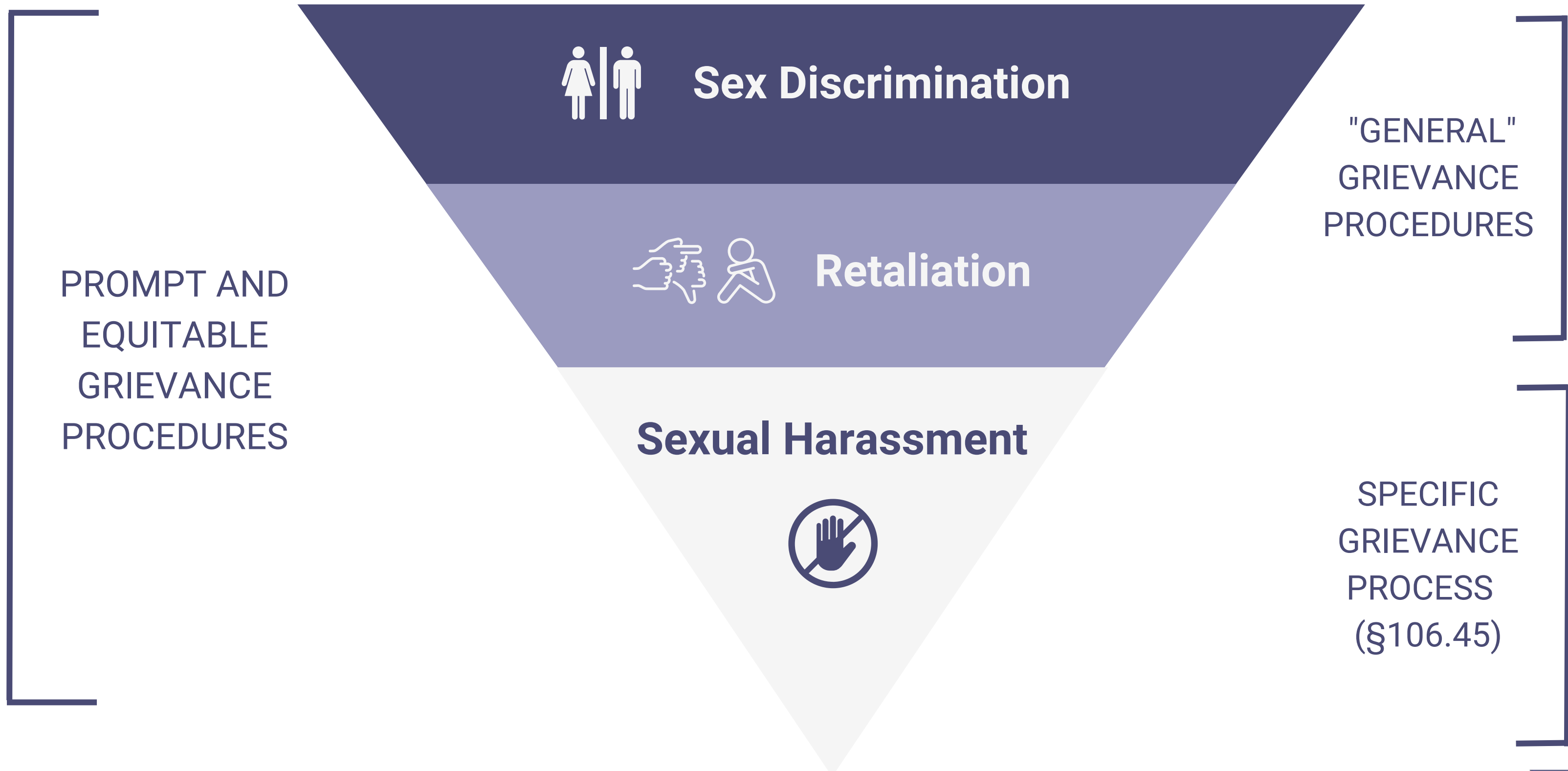


Retaliation

Intention to interfere with Title IX rights or because someone reports, testifies, participates, or refuses to participate in a Title IX proceeding. Includes:

- Intimidation
- Threats
- Coercion
- Discrimination

School's Required Response to Incidents



School's Required Response to Incidents



Sex Discrimination



Retaliation



Sexual Harassment

PROMPT AND
EQUITABLE
GRIEVANCE
PROCEDURES

"GENERAL"
GRIEVANCE
PROCEDURES

SPECIFIC
GRIEVANCE
PROCESS
(§106.45)

Who is Protected?

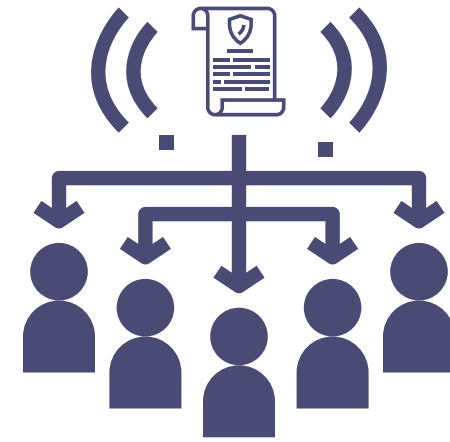
- All students regardless of:
 - Sexual orientation
 - Gender identity
 - Nationality
 - Immigration status
 - Race
 - Ability
- All genders are included
- Employees, such as teachers, staff, and administrators
- Recipients include approximately 17,600 local school districts, over 5,000 postsecondary institutions, and charter schools, for-profit schools, libraries, and museums

Compliance with the Regulations

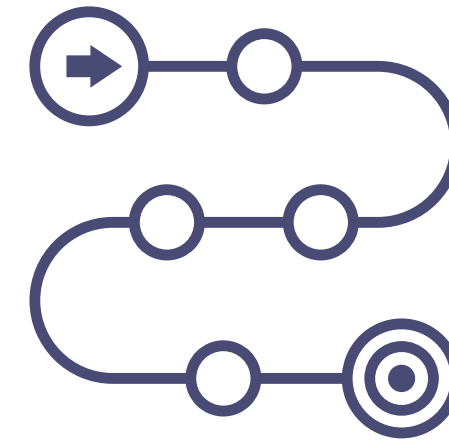
Each recipient must:



Designate a
Title IX
Coordinator



Disseminate
a policy



Adopt and
publish
grievance
procedures

Compliance with the Regulations

Recipients must comply with the requirements of Title IX as outlined under the Regulations.

Recipients may:

- Provide guidelines, policies or protocols through their codes of conduct beyond the scope of the Regulations;

and/or

- Provide details regarding policies or procedures which are not addressed in the Regulations.

How has Florida Southern College approached this requirement?

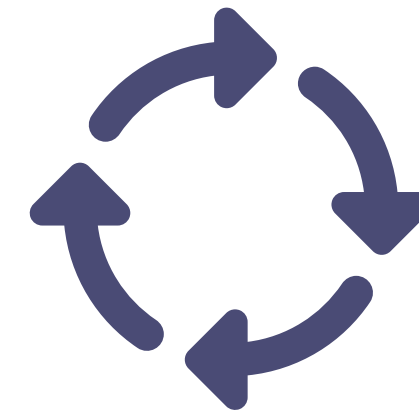
Cornerstones of the Title IX Process



“Prompt and equitable”
grievance procedures for
complaints of sex
discrimination



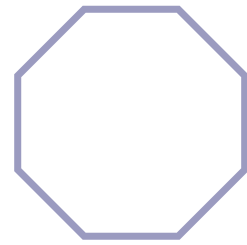
Grievance process that
complies with §106.45
for formal complaints of
sexual harassment



Transparent and
consistent process for
Complainants and
Respondents

The Goal of Title IX

Ultimately, the goal is to:



Stop the harassment or discrimination



Prevent further recurrence of harassment or discrimination



Remedy the effects of harassment or discrimination

Risks Associated with Non-Compliance



Potential for legal action



Loss of federal funding



Media attention



Discriminatory and unsafe environment for your learners

Definition of Sexual Harassment under Title IX



Definition of Sexual Harassment

Conduct on the basis of sex that satisfies one or more of three types of behavior:

1

**QUID PRO QUO
HARASSMENT**

2

**UNWELCOME
CONDUCT THAT
IS SO “SEVERE,
PERVASIVE AND
OBJECTIVELY
OFFENSIVE” THAT
IT EFFECTIVELY
DENIES A PERSON
EQUAL ACCESS
TO EDUCATION**

3

**SEXUAL
ASSAULT**

**DATING
VIOLENCE**

**DOMESTIC
VIOLENCE**

STALKING

1

QUID PRO QUO HARASSMENT

An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient of an individual's participation in unwelcome sexual conduct.

- May be expressed or implied
- Need not be “severe” or “pervasive” as a single incident
- Considered inherently “offensive” and jeopardizes equal educational access

2

**“SEVERE,
PERVASIVE AND
OBJECTIVELY
OFFENSIVE”**

Unwelcome conduct determined by a reasonable person to be so severe, pervasive **and** objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity.

3

**SEXUAL
ASSAULT**

**DATING
VIOLENCE**

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VIOLENCE**

STALKING

Specific offenses defined under the FBI's
Uniform Crime Reporting (U.C.R.) program.

20 U.S.C. 1092 (f)(6)(A)(v)

Sexual Assault

Sex Offenses, Forcible:

Any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent.

Forcible Rape

Forcible Sodomy

Sexual Assault with an Object

Forcible Fondling

Sex Offenses, Nonforcible:

Unlawful, nonforcible sexual intercourse (not including prostitution offenses).

Incest

Statutory Rape

20 U.S.C. 1092(f)(6)(A)(v)

Dating Violence

Violence committed by a person

- a. who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- b. where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - i. The length of the relationship.
 - ii. The type of relationship.
 - iii. The frequency of interaction between the persons involved in the relationship.

34 U.S.C. 12291(a)(10)

Domestic Violence

Felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim:

- a. by a person with whom the victim shares a child in common,
- b. by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner,
- c. by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies,
- d. or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

34 U.S.C. 12291(a)(8)

Stalking

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- Fear for his or her safety or the safety of others; or
- Suffer substantial emotional distress

34 U.S.C. 12291(a)(30)

Consent



The Title IX regulations do not include a definition of consent and do not require recipients to adopt a particular definition of consent, including “affirmative consent,” with respect to sexual assault.

Consent in Florida Southern College Policy

“Consent” must be informed, voluntary, and mutual, and can be withdrawn at any time. There is no consent when there is force, expressed or implied, or when coercion, intimidation, threats, or duress is used. Whether a person has taken advantage of a position of influence over another person may be a factor in determining consent. Consent can be expressed verbally or nonverbally. Consent must be active, not passive. Silence or absence of resistance does not imply consent.”

Florida Southern College Sexual Misconduct & Sexual Harassment Policy

Consent in Florida Southern College Policy

“Consent in terms of sexual conduct is freely and actively agreeing together, with clear understanding, to engage in mutually agreed-upon sexual activities. Persons who can never provide consent include:

- Minors (in Florida, this is anyone under the age of 18);
- People with cognitive or social limitations that render them incapable of providing consent;
- Incapacitated persons. Incapacitation can occur through excessive alcohol or drug use or for other reasons such as unconsciousness, being asleep, or being otherwise physically unable to respond fully and effectively to the environment, such that they cannot make a knowing agreement to sexual activity.”

Consent in Florida Southern College Policy

“Consent is dynamic and ongoing throughout any given sexual encounter. It can be revoked by either party at any time. It does not “carry over” to future encounters. If one person’s response is unclear or ambiguous, it is the other person’s responsibility to confirm consent. Finally, intoxication is not the same as incapacitation. Being “drunk” doesn’t necessarily mean one is unable to give consent. Conversely, the use of alcohol or other drugs does not release anyone from the requirement to seek and provide consent.”

Florida Southern College Sexual Misconduct & Sexual Harassment Policy

When is Sexual
Harassment
Actionable?



When it denies a
person equal
access to education

BREAK UNTIL
9:30 AM

Responding to
Incidents of
Sexual
Harassment



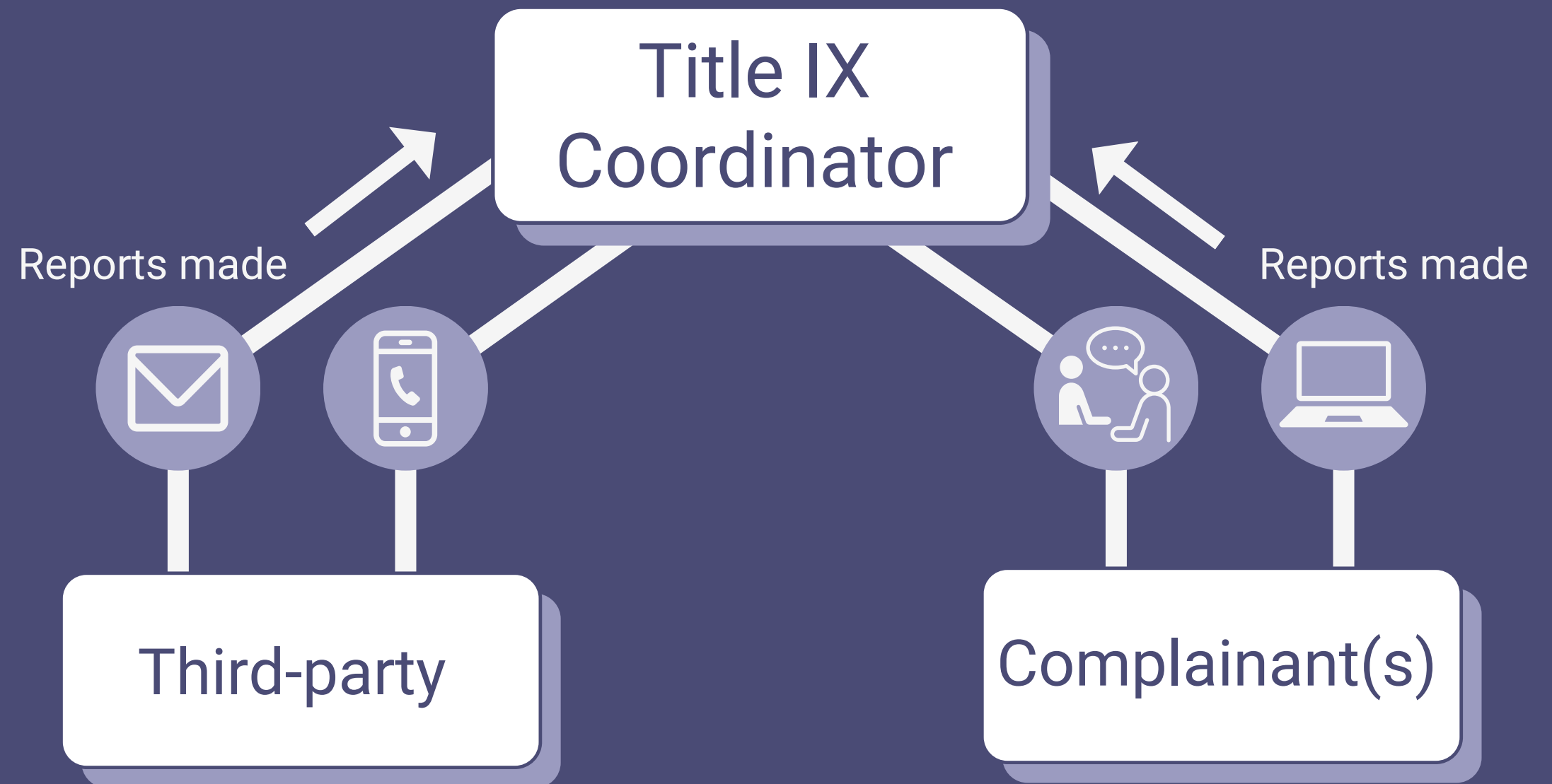
Reports of Sexual Harassment



Reporting Incidents of Sexual Harassment



As stated in the Title IX Regulations, any person may report sex discrimination, including sexual harassment, to the Title IX Coordinator



Florida Southern College's Online Reporting System



[GIVE](#) | [REQUEST INFO](#) | [VISIT](#) | [APPLY](#)

[About FSC](#) | [Academic Life](#) | [Campus Life](#) | [Admissions](#) | [Athletics](#) | [Alumni](#)

TITLE IX - JUST ASK

[Home](#) > [Contact Us](#) > [Offices Directory](#) > [Office of Student Conduct](#) > [Title IX - Just Ask](#)

GET SAFE FIRST AND THEN **JUST ASK!**

Student resources for reports of sexual discrimination or harassment, domestic violence, dating violence, and stalking.

[REPORT INCIDENT](#)

[JUST ASK GUIDE](#)

About Just Ask

We at Florida Southern College share a common belief that every individual should be able to work and study in an environment free from discrimination, harassment or intimidation based on race, color, religion, gender, gender identity, age, national origin, mental

Discrimination is illegal and in direct conflict with the mission of the College. It exposes the College and the individuals involved to liability under the law. Accordingly, the College prohibits any physical, written, or spoken conduct that violates the prohibitions

Reporting Considerations

Consider the various individuals who may report incidents of sexual harassment.



Who are they?

What would their experience be if they sought out information on how to report Title IX sexual harassment?

What do you want them to know?

What information do you want them to have access to?

How can you make the process of reporting easier for them?

Reporting to a Responsible Employee



“A person may report an alleged incident of sex discrimination, sexual misconduct, or sexual harassment to a College Responsible Employee, as defined Section IX Part A of this Policy. Responsible Employees must report the alleged incident to the Title IX Coordinator or appropriate College designees. Reporting an alleged incident to College employees is not confidential as College employees are obligated to report alleged incidents of sex discrimination, sexual misconduct, and sexual harassment to the Title IX Coordinator.”

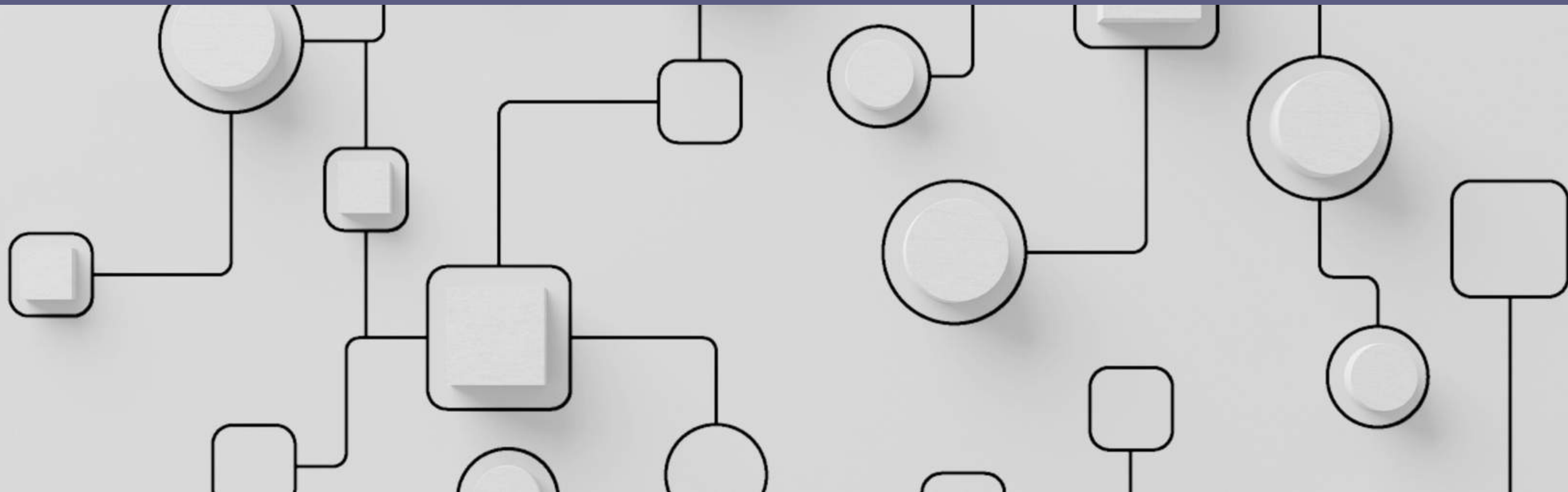
Florida Southern College Sexual Misconduct & Sexual Harassment Policy

Responsible Employees at Florida Southern College

“All Florida Southern College employees, including students (and Residential Advisors) employed by the College and faculty, are considered Responsible Employees and have a duty to report observations or knowledge of sexual discrimination, including sexual harassment, sexual misconduct, and sexual violence, or other criminal acts including but not limited to dating violence, domestic violence, stalking, and child abuse (when a crime has been committed against a minor which, in Florida, is anyone under the age of 18). Employees should report their knowledge to their immediate supervisors and to a designated Title IX Officer.”


Florida Southern College Sexual Misconduct & Sexual Harassment Policy

Title IX Incident Assessment




Title IX Jurisdiction


Title IX Coordinator must conduct a preliminary assessment of the reported incident to determine if it would be considered sexual harassment under Title IX, if proven. Title IX outlines four threshold criteria which must all be met:




Incident constitutes sexual harassment as previously defined



School must have “actual knowledge” of an allegation of the incident of sexual harassment



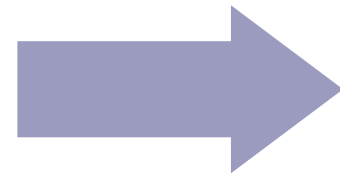
Conduct must have occurred within the school’s own education program or activity



Alleged harassment must have occurred within the United States

First Threshold Criteria

Incident
constitutes
sexual
harassment
as previously
defined



1

**QUID PRO QUO
HARASSMENT**

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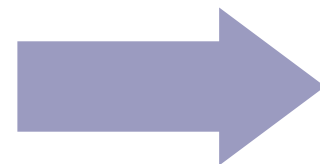
DATING
VIOLENCE

DOMESTIC
VIOLENCE

STALKING**

Second Threshold Criteria

 School must have “actual knowledge” of an allegation of the incident of sexual harassment



§ 106.30 Definitions *Actual knowledge*

*"Notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient, or **to any employee of an elementary and secondary school.**"*

Actual Knowledge Explained

§ 106.30 Definitions

"Notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient, or to any employee of an elementary and secondary school."

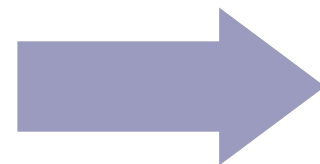
- Does not need to be a written statement or a formal complaint
- May be conveyed by any person, not just the Complainant
- May be *"written or oral, by observation, via a newspaper article or other means"*



Third Threshold Criteria



Conduct must have occurred within the school's own education program or activity



§ 106.44

Recipient's Response to Sexual Harassment Education Program or Activity

"Locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution."

Education Program or Activity Defined

§ 106.44

Recipient's response to sexual harassment.

"Locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution."

- School may offer supportive measures if harassment occurred outside of the educational program or activity
- School's responsibility is limited under Title IX regulations, though conduct outside of this jurisdiction may be addressed by Code of Conduct or other district policies
- Schools must make fact-specific determinations regarding substantial control over the respondent and the context

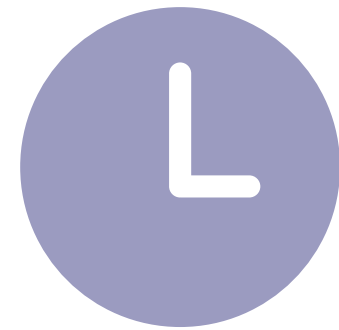
Examples of the Education Program or Activity



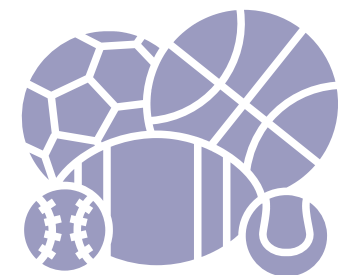
Conversations taking place on school-owned technology such as an iPad or Chromebook



A bus ride to a competition or class/organization trip




A school event taking place after school hours on property owned, leased, or managed by the college

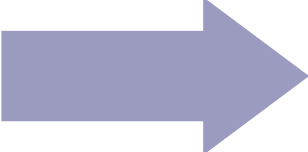


A sporting event taking place at a venue rented by the college

Fourth Threshold Criteria



Alleged harassment must have occurred within the United States



- Incidents occurring outside the United States would not be covered under Title IX
- This includes incidents that fall under the educational program, such as study abroad programs or travel with an extracurricular activity
- These incidents may still be addressed under a different district or school policy

What if the threshold criteria are not met?

“If the answer is ‘no’ to any of these questions, the alleged incident may be considered one or more of the following forms of conduct and addressed accordingly:

- ① Non-sexual harassment sex discrimination: The College’s grievance procedures for handling incidents of sex discrimination can be found in the College’s Student Handbook, the Employee Handbook, or the College’s Policy on Non-Discrimination and Anti-Harassment.
- ② Sexual Misconduct: Incidents of sexual misconduct will be addressed using the grievance procedures outlined in the *College’s Student Handbook, the Employee Handbook, or the College’s Policy on Non-Discrimination and Anti-Harassment*.
- ③ Non-actionable: Complainant may request, and the College may provide, supportive measures as appropriate.”

Florida Southern College Sexual Misconduct & Sexual Harassment Policy

What if the
threshold
criteria are not
met?

“The complainant may appeal the Title IX Coordinator’s preliminary assessment of the alleged incident to the appeal decision-makers within 5 days of receiving written notice from the Title IX Coordinator. If a formal complaint or complaint is filed, the respondent may appeal the Title IX Coordinator’s preliminary assessment to the appeal decision-maker within 5 days of receiving the complaint.”

Florida Southern College Sexual Misconduct & Sexual Harassment Policy

BREAK UNTIL
11:00 AM

Overview of the Title IX Grievance Process



Title IX Grievance Process Requirements



Title IX Grievance Process

FORMAL
COMPLAINT
FILED



INTAKE/
REVIEW

NOTICE OF
ALLEGATIONS
SENT TO PARTIES

INVESTIGATION

HEARING

WRITTEN
DETERMINATION

APPEALS
PROCESS

INFORMAL RESOLUTION
(OPTIONAL, BUT MAY BE INITIATED IN THIS WINDOW)



Basic Requirements

A recipient's grievance process MUST:



Treat Complainants and Respondents equally

- Ensure processes do not differ based on status as a Complainant or Respondent
- Communicate rights of the parties

Basic Requirements

A recipient's grievance process MUST:

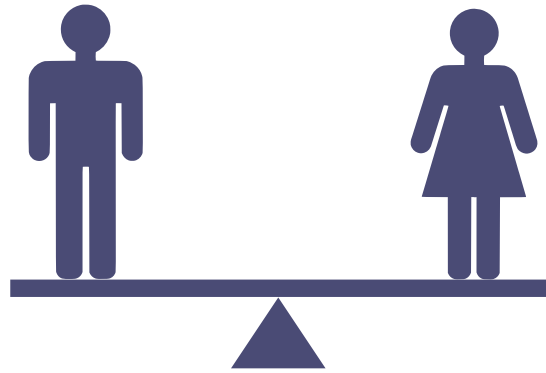


Require objective
evaluation of relevant
evidence

- Consider both inculpatory and exculpatory evidence
 - Inculpatory = Corroborating evidence
 - Exculpatory = Contradictory evidence
- Do not determine credibility based solely on a person's status as a Complainant, Respondent, or witness

Basic Requirements

A recipient's grievance process MUST:



Require Title IX
personnel not have bias
and conflict of interest

- Title IX personnel must be trained
- Title IX personnel must “*not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent*”
- Title IX personnel should consider recusing themselves if they are unable to serve impartially.

Basic Requirements

A recipient's grievance process MUST:

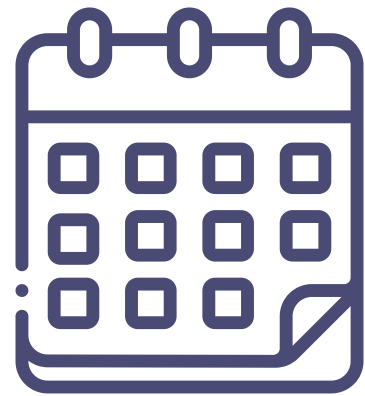


Include a presumption that Respondent is not responsible until a determination is made

- Punitive measures may not be put in place until a finding of responsibility has been issued
- Think "*innocent until proven guilty*" in the criminal justice system

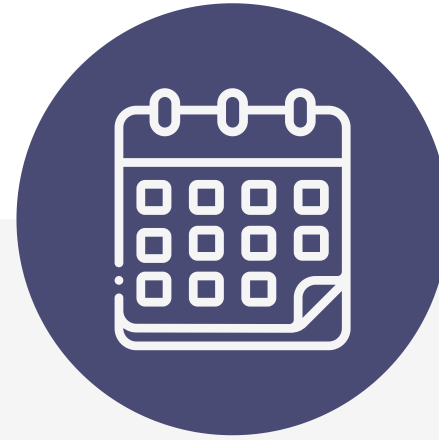
Basic Requirements

A recipient's grievance process MUST:



Include reasonably prompt time frames

- Title IX policies should include reasonably prompt time frames for filing and resolving appeals, informal resolution processes, and more
- The grievance process may be delayed for good cause, which could include:
 - Absence of a party or party's advisor
 - Request from law enforcement to pause for concurrent investigation
 - Acquiring accommodations such as language assistance, disabilities



“The College aims to complete the Title IX grievance process, including appeals and informal resolution processes, in a reasonably prompt time frame. Generally, the College will conclude the grievance process within **90 days**.

The College reserves the right to allow for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of the party, a party’s advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities”

Basic Requirements

A recipient's grievance process MUST:



Describe range of possible disciplinary sanctions and remedies

- Ensure these ranges are communicated in policy and procedural documents

Basic Requirements

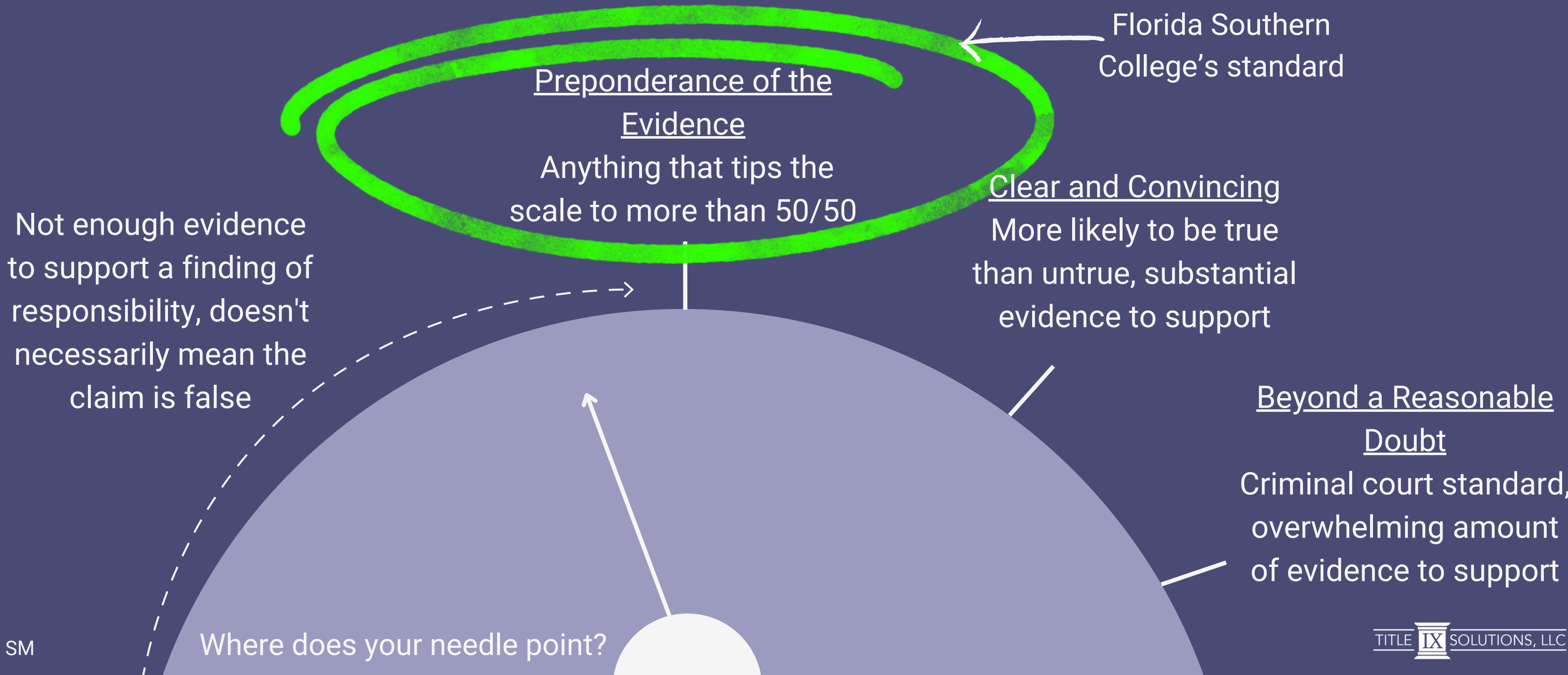
A recipient's grievance process MUST:



State the standard of evidence

- A school may elect to apply either:
 - The *preponderance of evidence* (“more likely than not”) standard; or
 - The clear and convincing evidence (“highly probable”) standard
- The same standard of evidence must be used for:
 - Formal complaints against students as is used for formal complaints against employees, including faculty
 - All formal complaints of sexual harassment

Standards of Evidence



Preponderance of the Evidence

Anything that tips the scale to more than 50/50

Florida Southern College's standard

Clear and Convincing
More likely to be true than untrue, substantial evidence to support

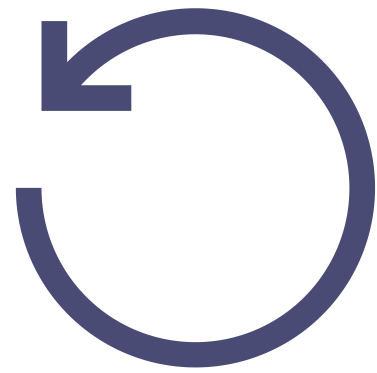
Beyond a Reasonable Doubt
Criminal court standard, overwhelming amount of evidence to support

Not enough evidence to support a finding of responsibility, doesn't necessarily mean the claim is false

Where does your needle point?

Basic Requirements

A recipient's grievance process MUST:



Include the permissible
bases for appeal

- Title IX allows for appeals of the final determination of responsibility

Basic Requirements

A recipient's grievance process MUST:



Describe the range of
supportive measures
available

- Ensure these ranges are communicated in policy

Basic Requirements

A recipient's grievance process MUST:



Not require or rely on
privileged information,
unless waived

- This would include information such as:
 - Medical records
 - Academic records protected under FERPA
 - Conversations with privileged individuals such as counselors or clergy

Notice of Allegations and Title IX Investigations



Initiation of the Grievance Process

A recipient must investigate a formal complaint.

- The Title IX Coordinator may also serve as the Investigator
- Burden of proof and gathering of evidence is on the school
- Both Parties must be given the equal opportunity to present witnesses and evidence
- Neither Party may be restricted in their ability to discuss the allegations or gather and present relevant evidence

Title IX Grievance Process

WE ARE
HERE



INTAKE/
REVIEW

NOTICE OF
ALLEGATIONS
SENT TO PARTIES

INVESTIGATION

HEARING

WRITTEN
DETERMINATION

APPEALS
PROCESS

INFORMAL RESOLUTION
(OPTIONAL, BUT MAY BE INITIATED IN THIS WINDOW)



Notice of Allegations

Notice of Allegations must contain:

- Notice of the school's grievance process
- Sufficient details of the allegations, including:
 - Identities of the parties involved;
 - The conduct allegedly constituting sexual harassment;
 - The date and location of the alleged incident(s)
- Sufficient time period for the parties to prepare a response before interview
- Presumption of not responsible
- Determination of responsibility at the conclusion of the grievance process
- Allowance of an Advisor
- Right to inspect and review all evidence gathered during the investigation
- Reference to any policy in the school's code of conduct which prohibits knowingly making false statements



PERSONAL AND CONFIDENTIAL

Regarding Case Number: 2023-Q1-0120

Dear Jordan Reynolds:

The Sample Independent School District ("District") Title IX Office has received a Formal Complaint from Alex Baker ("Complainant") alleging that you ("Respondent") have engaged in conduct that may be a violation of Sample Independent School District policy.

Complainant alleges the following:

On March 3, 2023 at approximately 7:00 PM, Complainant and Respondent attended an event honoring graduating senior students held on the Sample High School campus. Following the event, the Complainant alleges the Respondent engaged in the following conduct in band hall:

- Respondent kissed Complainant without consent;
- Respondent placed their hand up Complainant's dress and inside of their underwear without consent

This letter serves as formal notice that the Title IX Office will be conducting a prompt, thorough, and impartial investigation of these allegations in accordance with the procedures detailed in the Sample Independent School District Sexual Harassment Policy, SISD Policy 237.

You are alleged to have engaged in Sexual Harassment as defined in the Sample District Sexual Harassment Policy, specifically:

237(4)(iii) "Sexual assault"- includes any sexual act directed against another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving affirmative consent.

(b) Fondling: The touching of the private body parts (including genitalia, anus, groin, breast, inner thigh or buttocks) of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

237(4)(ii) "Sexual harassment"- means conduct on the basis of sex that satisfies one or more of the following:

(a) An employee of the District conditioning the provision of an aid, benefit, or service of the District on an individual's participation in unwelcome sexual conduct (commonly referred to as a "quid pro quo");

(b) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and

Sample Notice of Allegations

Sample Notice of Allegations

objectively offensive that is effectively denies a person equal access to the District's education program or activity (commonly referred to as a sexually or gender-based "hostile environment").

Respondent is considered "not responsible" for violating District policy unless and until the District determines at the conclusion of the grievance process, by a preponderance of the evidence, that the Respondent is responsible for the conduct. The burden is on the District to gather evidence, investigate the allegations, summarize all relevant evidence in an investigation report, conduct a live hearing for the cross-examination of the parties and reach a final determination for all matters alleged.

You may have an advisor of your choice assist or represent you in this process..."

Title IX Grievance Process

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Title IX Investigations



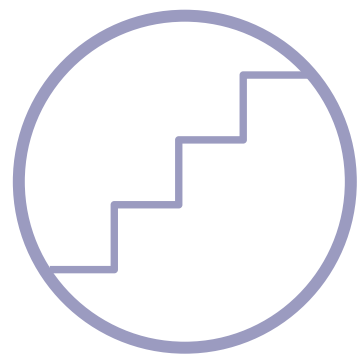
Title IX personnel involved:

- Title IX Coordinator
- Title IX Investigator(s)



Objectives of this stage:

- Gather statements and evidence from Parties and witnesses
- Summarize all relevant evidence in a report to provide to the Decision-Maker



Milestones of this stage:

- Planning the investigation
- Conducting interviews
- Providing evidence for Parties to review
- Creating an investigation report

Investigation of Formal Complaints

- Both parties have the right to an Advisor throughout the grievance process
- School must give written notice of any meeting in which the party is required to participate
- Parties and their Advisors must be given equal access to inspect and review all evidence gathered
- Parties must be given at least ten days to file a written response regarding the investigation evidence
- School may require the Parties to submit any additional evidence prior to the finalization of the investigation report

Investigation of Formal Complaints

- Evidence provided to the Parties must also be available during the decision-making process with each Party having equal access
- Investigator must complete a report that fairly summarizes relevant information at least ten days prior to a scheduled decision-making process, and must provide copies to each party and their Advisors
 - *“Upon completion, investigator will send the investigative report to each party and the party’s advisor, if any, at least ten (10) days prior to a scheduled hearing, in electronic format or hard copy.” -FSC Policy*
- Investigator may include recommended findings or conclusion in the investigative report
 - Decision-Maker is under the independent obligation to objectively evaluate relevant evidence in making a determination

Title IX Hearings



Title IX Grievance Process

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Title IX Decision-Making Processes



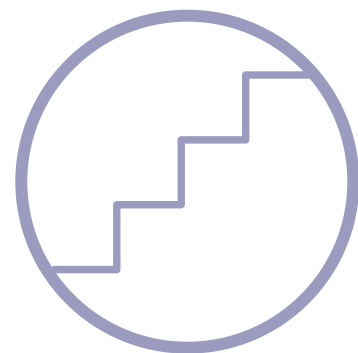
Title IX personnel involved:

- Title IX Coordinator
- Title IX Decision-Maker(s)



Objectives of this stage:

- Review all evidence and the investigation report provided by the Title IX Investigator(s)
- Provide an opportunity for Parties to ask relevant cross-examination questions



Milestones of this stage:

- Conducting pre-hearing/pre-decision-making meetings
- Facilitating a hearing or other decision-making process
- Reviewing of all relevant evidence and responses to questions

Title IX Decision- Making Processes

- The Decision-Maker cannot be the same person as the Title IX Coordinator or the Investigator



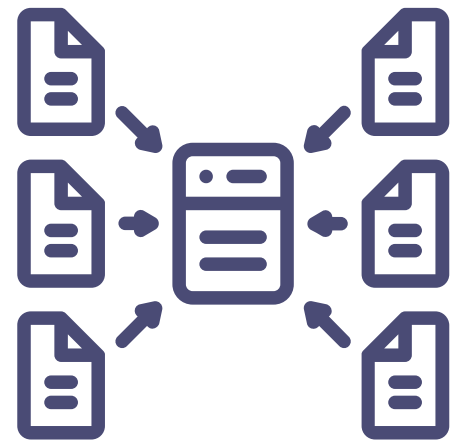
A postsecondary school must provide for a live hearing



A live hearing is optional for elementary and secondary schools

Title IX Hearings

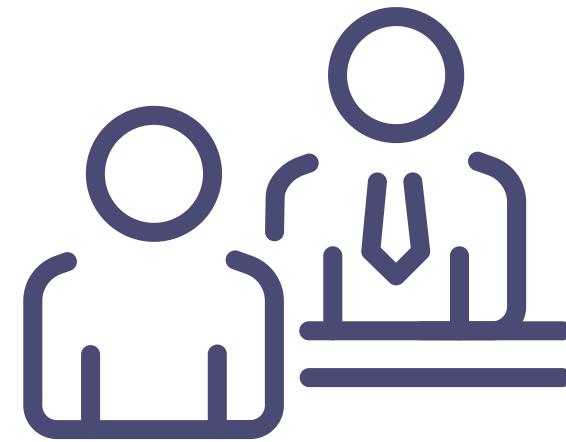
Consider the following:



The recipient may consolidate cases arising from the same facts.



Hearings may occur with Parties present in the same geographic location or live, virtually.



If a Party does not have an Advisor, one must be provided by the institution.



Only relevant questions may be asked during cross-examination. Decision-Maker will determine relevance.

The Importance of Relevance

The Title IX Regulations make it clear that ALL questions asked within a Title IX decision-making must be relevant.

What does this mean and how will it be determined?

Directly Related vs. Relevant

Neither term is defined in the Title IX Regulations

Directly Related

Evidence that is connected to the complaint, but **does not** tend to prove or tend to disprove the complaint.

Example: A note the Respondent gave the Complainant in their Algebra class asking for help on a practice question. (Provided by the Complainant at their investigative interview.)

Relevant

Evidence that is connected to the complaint that would make a disputed fact more or less probable.

Example: A screenshot of a text message the Respondent sent the Complainant during PE that contained nude images of the Respondent. (Provided by the Complainant at their investigative interview.)

What is Never Relevant Under Title IX?

"Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the respondent and are offered to prove consent."

§106.45(b)(6)(i)



This is often referred to as rape shield protections.

Sexual predisposition = sexual orientation, sexual preferences, propensity to engage or not engage in sexual activity

Prior sexual history = identities of past sexual partners, number of past sexual partners, past sexual interactions with the Respondent which do not satisfy either of the two above exceptions

What is Never Relevant Under Title IX?

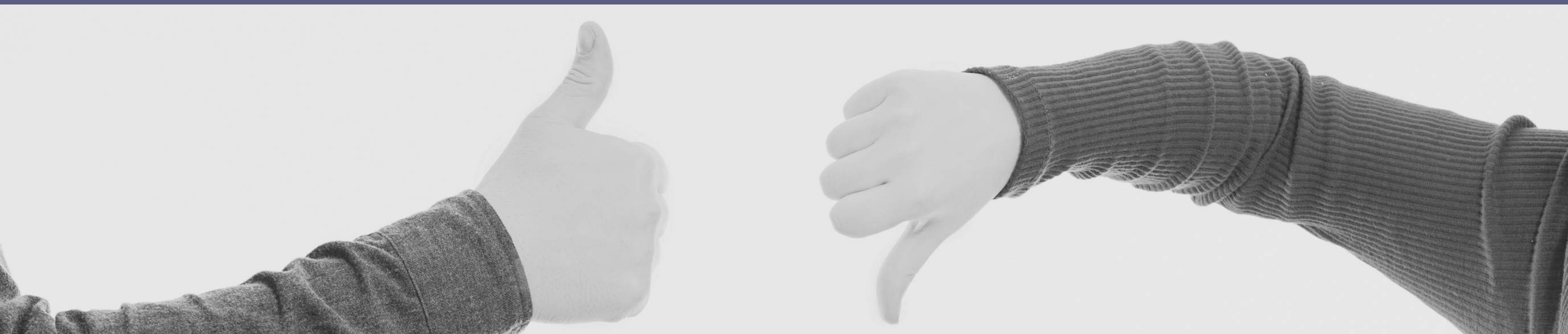
Additionally, "a school's grievance process must not use, rely on, or seek disclosure of information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege."

EXAMPLES:

- Medical records
- Academic records protected under FERPA
- Conversations with privileged individuals such as counselors or clergy

34 CFR §106.8(a)

Determinations Regarding Responsibility and Outcomes



Written Determination Regarding Responsibility



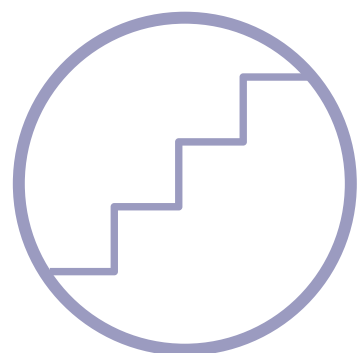
Title IX personnel involved:

- Title IX Coordinator
- Title IX Decision-Maker(s)



Objectives of this stage:

- Make a determination regarding responsibility based on the standard of evidence state in policy
- Communicate this determination to the Parties



Milestones of this stage:

- Thoroughly reviewing all relevant evidence
- Drafting a compliant written determination
- Issuing the determination to the Parties (and Advisors and/or parents and legal guardians, if necessary)

Title IX Grievance Process

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What is a Determination Regarding Responsibility?

- Document drafted and issued by the Decision-Maker after the live hearing
- Based upon relevant evidence and testimony obtained during the grievance process applied to the school's standard of proof
- Contains various sections, notably a statement of, and rationale for, the result of each alleged policy violation (i.e., "responsible" or "not responsible" for violating the policy)
- Also referred to as the "Written Determination"

Key Elements of the Written Determination

Title IX states that the written determination must include:

- 1 Identification of the allegations potentially constituting sexual harassment as defined under Title IX;
- 2 Description of the procedural steps taken from receipt of formal complaint through the determination;
- 3 Findings of fact supporting the determination;
- 4 Conclusions regarding the application of school's code of conduct to the facts;

Key Elements of the Written Determination

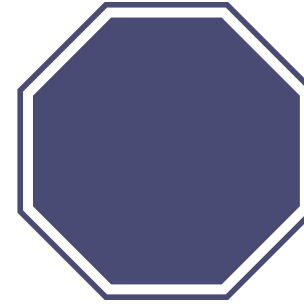
Title IX states that the written determination must include:

- 5 A statement of, and rationale for, the result as to each allegation, including:
 - A determination regarding responsibility;
 - Any disciplinary sanctions the school imposes on the Respondent;
 - Whether remedies designed to restore or preserve equal access to the school's education program or activity will be provided by the school to the Complainant; and
- 6 The school's procedures and permissible bases for the Complainant and Respondent to appeal.

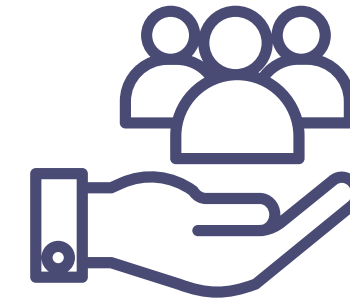
Issuing the Written Determination



The recipient must provide the written determination to parties simultaneously



Determination is final after appeal determination (if appeal was filed) or upon expiration of appeal window



School is responsible for provision of remedies



“The decision-maker(s) will issue the written determination to the parties simultaneously no more than 15 (fifteen) days after the conclusion of the live hearing. Copies will be sent to the parties and their advisors by email, certified mail, or overnight delivery service such as Federal Express, with receipt of acknowledgement.” -*FSC policy*

Title IX Sanctions

Title IX Regulations require schools to do the following:

Implement sanctions and/or remedies that restore or preserve the Complainant's equal access to the school's education program or activity, if a Respondent is found responsible.

"Include the procedures and permissible bases for the Complainant and Respondent to appeal."

§106.45(b)(1)(viii)

Range of Sanctions

This is the range of sanctions listed in Florida Southern College's *Sexual Misconduct & Sexual Harassment Policy*:



 Employee sanctions may also include suspension and termination

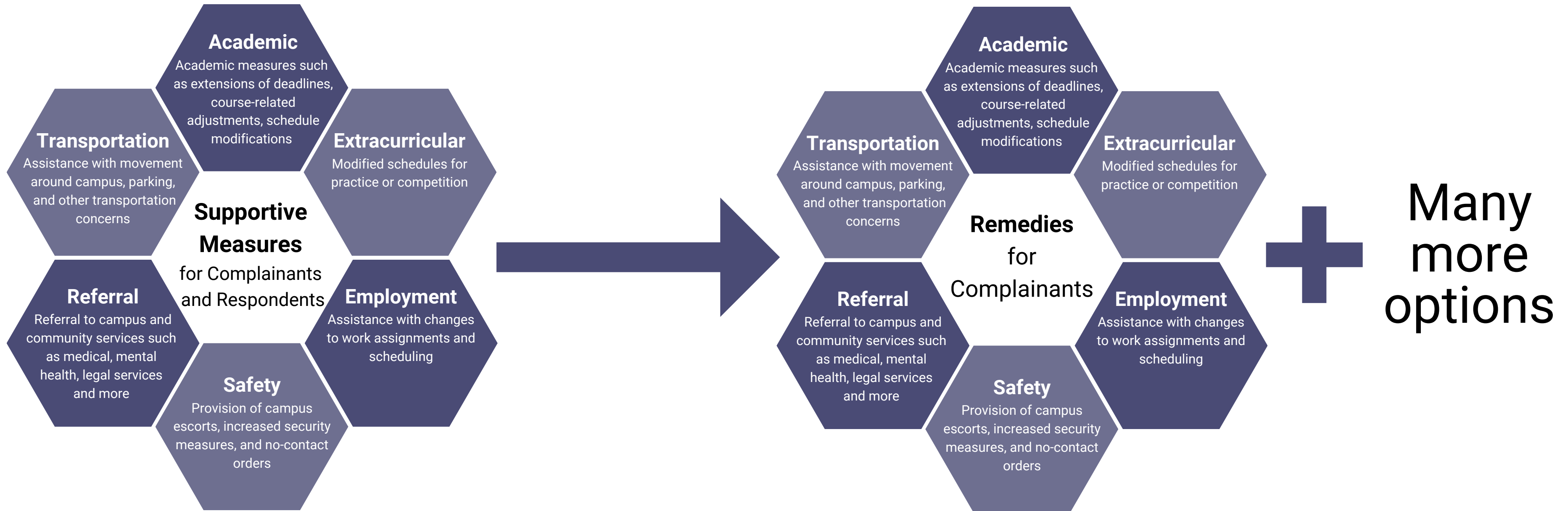
What Are Remedies?

- Implemented following the determination that the Respondent was responsible.
- Intended to restore Complainant's access to the educational program or activity.
- Unlike supportive measures, remedies can burden the Respondent.

"The details of remedies provided to the Complainant remain part of the Complainant's education record and not the Respondent's education record, unless the remedy also imposes requirements on the Respondent."

(p. 1458 Preamble to the 2020 Title IX Regulations)

Remedies may simply be a continuation of supportive measures already in place or entirely new measures implemented.



“Possible remedies include, but are not limited to:
Improved campus lighting; Educational programming; Staff training;
Campus climate assessments” -*FSC Policy*

Title IX Appeals



Title IX Grievance Process

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Appeals Process



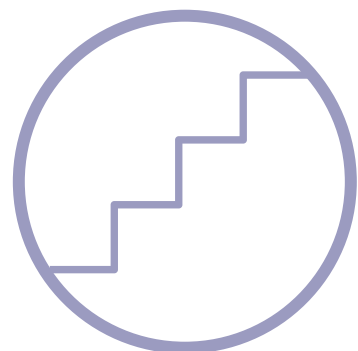
Title IX personnel involved:

- Title IX Coordinator
- Title IX Appellate Decision-Maker(s)



Objectives of this stage:

- Determine whether a Party has a valid basis of appeal
- If valid, conduct a review to determine whether the concern requires a return to a previous stage of the grievance process, the decision stands, or the decision is overturned



Milestones of this stage:

- Reviewing the initial appeal
- Making a determination on the validity of the appeal
- Making a determination in light of the valid basis of appeal
- Communicating the final decision to the Parties

Appellate Decision-Makers at FSC

“In the event that a party files an appeal, the appeal decision-maker(s) will be:”



Vice President of Student Development, Dr. Lauren Albaum for incidents involving students



Vice President of Finance and Administration, Terry Dennis, for incidents involving employees

Required Bases for Appeal

Title IX Regulations require every school to utilize these bases for appeal:

- A** Procedural irregularity that affected the outcome of the matter;
- B** New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- C** The Title IX Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.

34 CFR §106.45(b)(8)



“Either complainant or respondent may file a written notice of appeal of a determination or dismissal of a formal complaint within 5 days after receiving the written determination or notice of dismissal.” -*FSC Policy*

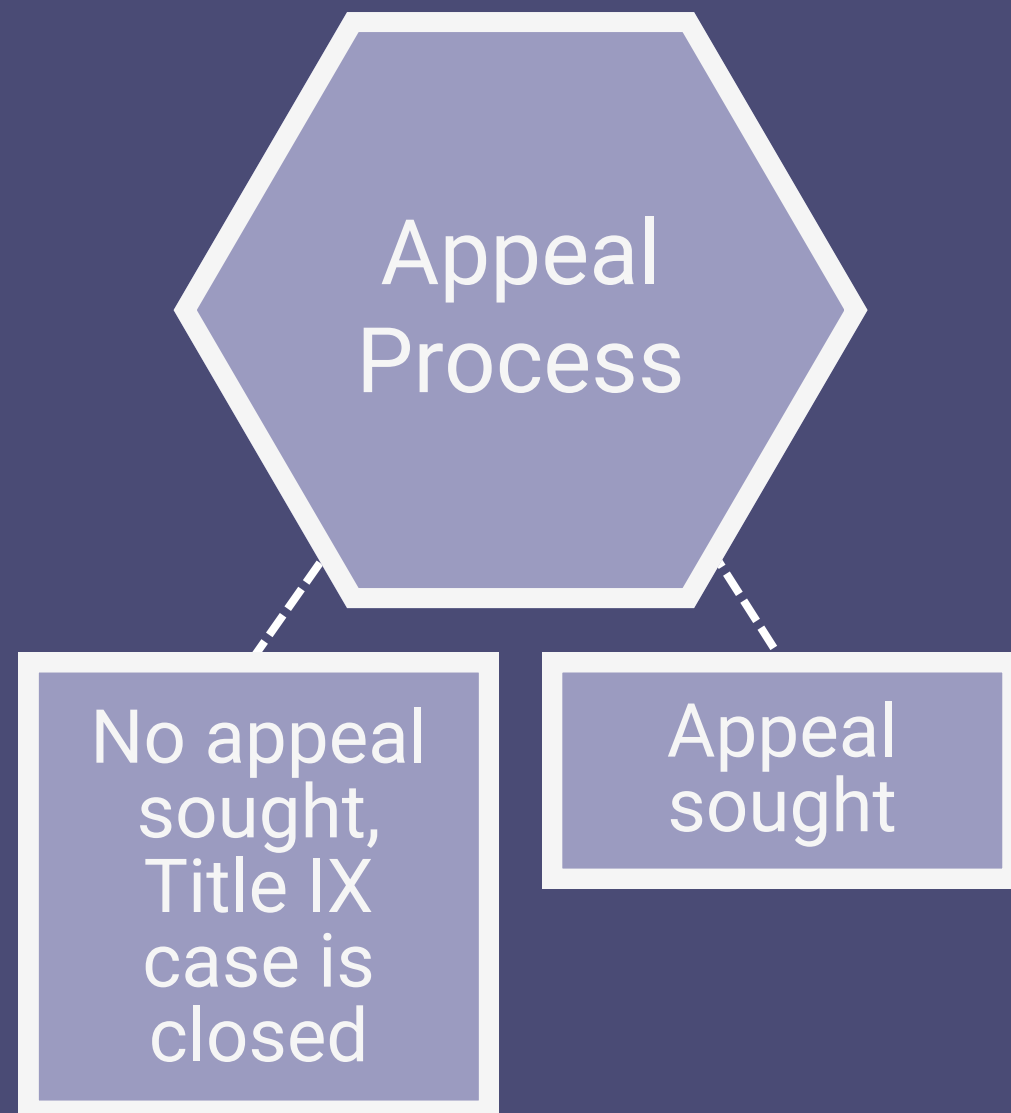
Appeal Considerations

- Appellate Decision-Maker cannot have a conflict of interest and cannot be the Title IX Coordinator, Investigator, or Decision-Maker, must be trained
- FSC Policy does not allow for any additional bases of appeal
- Parties must be notified in writing of
 - Other Party's decision to appeal
 - Decision rendered upon review of the appeal
- Parties must be offered opportunity to provide written argument



“The appeal decision-maker will issue a written decision simultaneously to both parties, describing the result and the rationale of the decision generally within 5 days of receiving the final written statements from the parties.” -FSC Policy

Appeal Process Outcomes



If one or both Parties does not seek an appeal or does not submit an appeal within the 5 day timeframe outlined in FSC policy, the case will be closed and the determination stands.

If one or both Parties seeks an appeal, the basis of appeal will be reviewed. If it is approved, an Appellate Decision-Maker will make a determination, which could result in:

- A new investigation
- A new hearing
- Overturning the decision regarding responsibility
- A different sanction (if sanctions are allowed to be appealed under your policy)

Informal Resolution Options



Title IX Informal Resolution



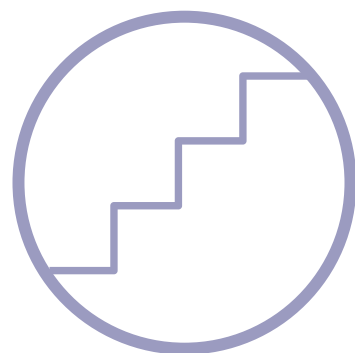
Title IX personnel involved:

- Title IX Coordinator
- Title IX Informal Resolution Facilitator(s)



Objectives of this stage:

- Provide an alternate avenue for the resolution of a formal complaint
- Facilitate a process aimed at creating resolution
- Create a written agreement with the terms for resolution



Milestones of this stage:

- Conducting pre-informal resolution meetings to understand Parties concerns
- Facilitating informal resolution processes such as mediation or restorative justice meetings
- Drafting the written informal resolution agreement

Title IX Grievance Process



Title IX Informal Resolution

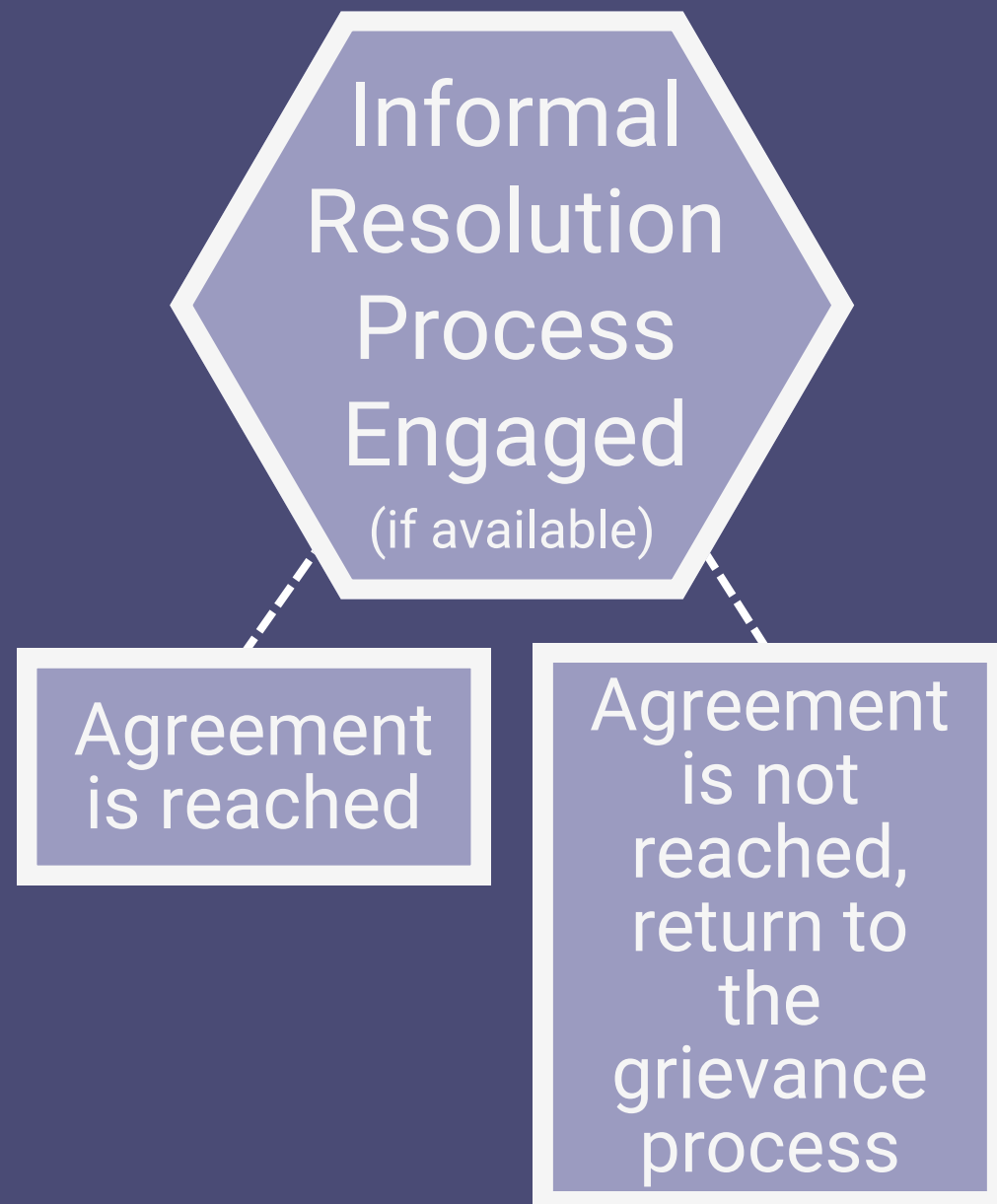
Title IX Regulations allow for schools to do the following:

"at any time prior to reaching a determination regarding responsibility the recipient may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the recipient –"

§106.45(b)(9)

- Provides written notice disclosing the allegations and the requirements of the informal resolution process
- Obtains written consent to participate in the informal resolution from both Parties
- Does not offer informal resolution for cases in which there is alleged employee on student sexual harassment

Informal Resolution Outcomes



An agreement must be reached by both Parties, with help from a facilitator. Conditions of the agreement could include things such as:

- Education/Training
- Counseling Restrictions on Contact Accommodations for academics, work-place, or extracurricular activities
- Disciplinary action
- Voluntary removal
- Acceptance of responsibility

If the Parties cannot come to an agreement, the matter resumes where it left off in the Title IX grievance process.



Florida Southern College's Sexual Misconduct and Sexual Harassment policy allows for the informal resolution of formal complaints.

See you tomorrow
at 2:00 pm

FLORIDA SOUTHERN COLLEGE

TITLE IX COORDINATOR
WORKSHOP



Learning Objectives

As a result of this training, participants will be able to:

Identify key elements of the Notice of Allegations and strategies for initiating the Title IX grievance process

Demonstrate strategies for implementing sanctions and remedies.

Evaluate the role of the Title IX Coordinator throughout the key stages of the grievance process.

Recognize Title IX Coordinator responsibilities that fall outside of the grievance process.

Outline possible outcomes following informal resolution and the written determination regarding responsibility.

Training Agenda

Comprehensive Title IX Training

1:30 p.m. - 2:15 p.m. | Title IX Allegations and Start of the Grievance Process

2:15 p.m. - 3:00 p.m. | Role of the Title IX Coordinator in Investigations, Hearings, and Informal Resolution Processes

3:00 p.m. - 3:30 p.m. | Title IX Outcomes, Sanctions, and Remedies

3:30 p.m. - 4:00 p.m. | Informal Resolution Options

4:00 p.m. - 4:15 p.m. | Additional Implementation Considerations

4:15 p.m. - 4:30 p.m. | Day 1 Debrief and Q&A

Institutional Response to Title IX Sexual Harassment



Recipient's Response

Schools must not act in a manner that is deliberately indifferent, meaning:

"...clearly unreasonable in light of the known circumstances."

Qualifying Incidents of Sexual Harassment

How must a recipient respond?

- Treat Complainants and Respondents equitably by offering supportive measures

? When do they apply?

? What do they include?

- Follow a grievance process that complies with §106.45 of the Title IX regulations
 - *This process is outlined in Florida Southern College's Sexual Misconduct & Sexual Harassment Policy.*

Following Receipt of a Report



What must the Title IX Coordinator do next to ensure the district is not acting with deliberate indifference?

Following Receipt of a Report

At a minimum...

"The Title IX Coordinator must..."

Promptly contact the Complainant to discuss the availability of supportive measures,

Consider the Complainant's wishes with respect to supportive measures,

Inform the Complainant of the availability of supportive measures with or without the filing of a formal complaint,

Explain to the Complainant the process for filing a formal complaint."

complete these four important tasks.

Supportive Measures Defined

§ 106.30 Definitions

"Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a formal complaint or where no formal complaint has been filed"

What?

- Non-disciplinary, non-punitive services offered to the Complainant & Respondent
- Includes measures designed to protect the safety of all Parties or the school's educational environment, or to deter sexual harassment

When?

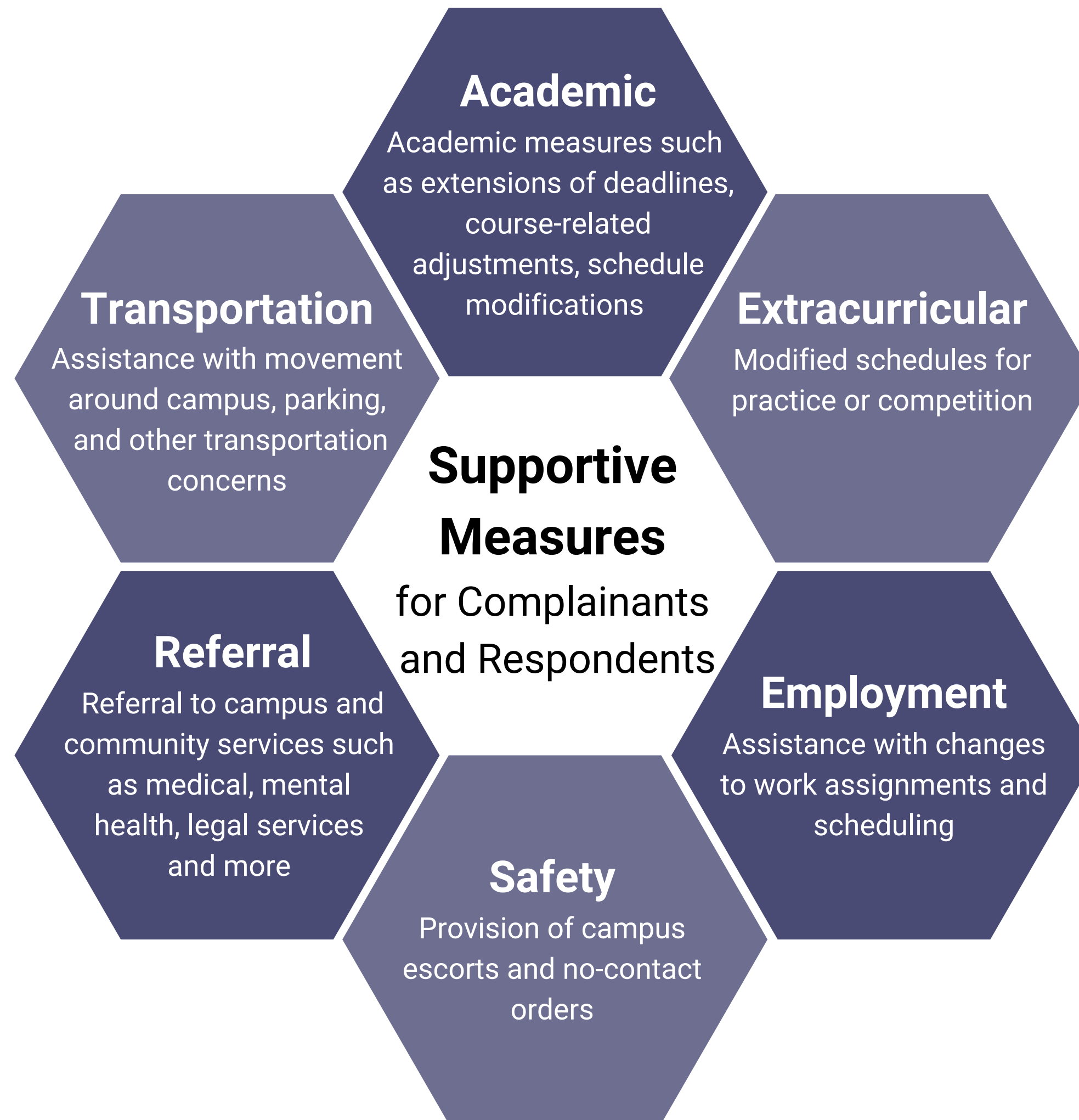
- Available before or after filing a formal complaint or where no formal complaint has been filed

Why?

- Offered without fee or charge to the Complainant or Respondent; as appropriate and reasonably available

How?

- Designed to restore or preserve equal access to the school's education program or activity without unreasonably burdening the other party



Emergency Removal

§ 106.44

Recipient's response
to sexual harassment

"Nothing in this part precludes a recipient from removing a Respondent from the recipient's education program or activity on an emergency basis..."



Safety and risk analysis



Immediate threat to physical health or safety



School must provide Respondent with notice and opportunity to challenge the decision



"In the event of emergency removal, the College will provide the respondent with post-removal notice and the opportunity to appeal the decision immediately following the removal." -FSC policy

Emergency Removal

§ 106.44

Recipient's response
to sexual harassment

"Nothing in this subpart precludes a recipient from placing a non-student employee Respondent on administrative leave during the pendency of a grievance process..."



Applies to any non-student employee of Florida Southern College

Formal Complaints



Title IX Grievance Process

FORMAL
COMPLAINT
FILED



INTAKE/
REVIEW

NOTICE OF
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INFORMAL RESOLUTION
(OPTIONAL, BUT MAY BE INITIATED IN THIS WINDOW)

Formal Complaint

Definitions §106.30

"[A] document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the recipient investigate the allegation of sexual harassment."



- Can be a physical document or an electronic document (email, Word document, etc.)
- Must contain a physical or electronic signature of the Complainant (or parent/legal guardian)
- Can be filed by the Title IX Coordinator

Formal Complaint by the Title IX Coordinator

"These final regulations obligate a recipient to initiate a grievance process when a Complainant files, or a Title IX Coordinator signs, a formal complaint, so that the Title IX Coordinator takes into account the wishes of a Complainant and only initiates a grievance process against the Complainant's wishes if doing so is not clearly unreasonable in light of the known circumstances."

(p. 71 Preamble to the Title IX Regulations)

- May be necessary if the allegations are serious and pose risk of further harm to the Complainant or others in the school community.
- Complainants have a right to not participate in the investigation and/or decision-making process.
- If a Title IX Coordinator signs a formal complaint, they are not considered the Complainant is not a Complainant or a Party in the process

Report vs. Formal Complaint

Report

- May allege sexual harassment, sex discrimination, or sexual misconduct
- May be written or oral
- May be submitted by any person, not just the alleged victim
- May be anonymous
- May be made at any time
- May be made in person or by mail, phone, email or any other means


Formal Complaint

- Alleges Title IX sexual harassment
- Required for initiation of the Title IX grievance process
- Required to be filed and signed by the Complainant or Complainant's parent or guardian (or Title IX Coordinator in certain instances)
- **Cannot be filed anonymously or by a third-party**

Florida Southern College's Online Formal Complaint Form



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FORMAL COMPLAINT OF MISCONDUCT

[Home](#) > [Contact Us](#) > [Offices Directory](#) > [Office of Student Conduct](#) > [Formal Complaint of Misconduct](#)

COMPLAINANT TYPE

FIRST NAME

Dismissal of a Formal Complaint

School MUST dismiss if the conduct alleged in the formal complaint:

Would not constitute sexual harassment as defined in §106.30 even if proved

Did not occur in the recipient's education program or activity

Did not occur against a person in the United States



Dismissal under Title IX does not preclude the College investigation under the *Policy on Non-Discrimination and Anti-Harassment*.

Dismissal of a Formal Complaint

School MAY dismiss if the conduct alleged in the formal complaint:

Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein

The Respondent is no longer enrolled or employed by the recipient

Specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein



A complaint will not be dismissed because a Complainant remains at or leaves the school.

Consolidation of Formal Complaints

Schools may consolidate formal complaints:

- ❖ Against more than one Respondent
- ❖ By more than one Complainant against one or more Respondents
- ❖ By one party against the other, where the allegations arise out of the same facts or circumstances

Title IX
Allegations and
Start of the
Grievance
Process

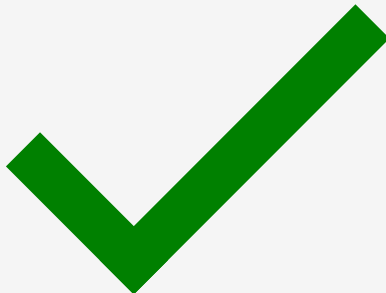


Drafting the Notice of Allegations



Title IX Grievance Process

WE ARE
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INTAKE/
REVIEW

NOTICE OF
ALLEGATIONS
SENT TO PARTIES

INVESTIGATION

DECISION-
MAKING
PROCESS

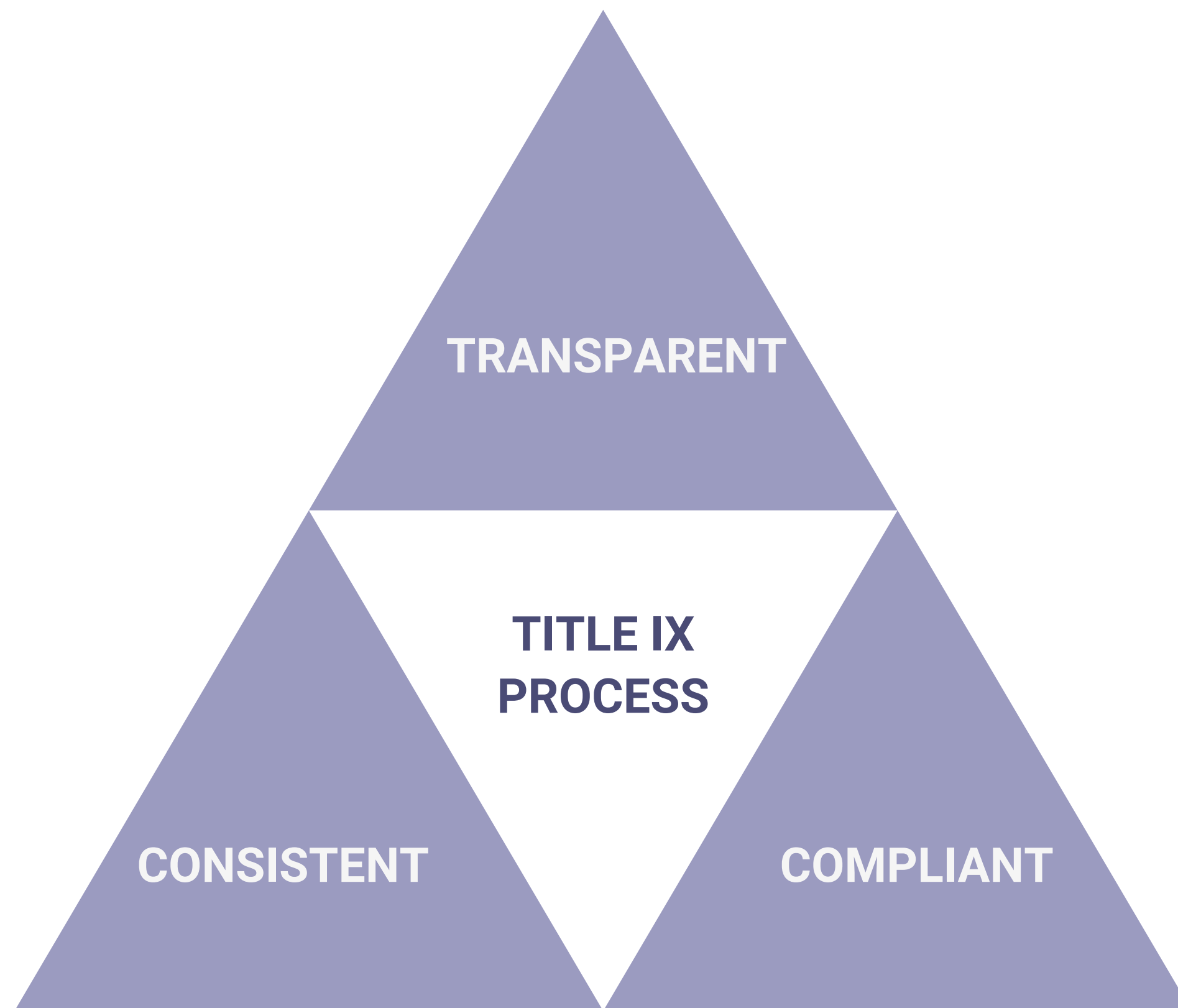
WRITTEN
DETERMINATION

APPEALS
PROCESS

INFORMAL RESOLUTION
(OPTIONAL, BUT MAY BE INITIATED IN THIS WINDOW)



Purpose of the Notice of Allegations



Elements of the Notice of Allegations

Upon receipt of a formal complaint, the Title IX Coordinator must issue written Notice to the Parties, if known. The Notice must contain the following information:

1. *“Notice of the allegation of sexual harassment, as defined in Section IV of this [Florida Southern College Sexual Misconduct and Sexual Harassment] policy, containing sufficient details known at the time, including:
 - a) Identities of the parties involved in the incident (if known);
 - b) Conduct allegedly constituting a policy violation;
 - c) Date and location of the alleged incident (if known).”*

Elements of the Notice of Allegations

2.

Notice to expect an initial interview with the Title IX Coordinator or Investigator.

“Sufficient time for each party to prepare a response before any initial interview.”

3.

Statement that the Parties have a right to an Advisor of their choice.

“Explanation of each party’s right to an advisor of their choice, who may be, but is not required to be, an attorney. The advisor may participate during the grievance process, subject to limitations established by the College. See Section XII of this Policy.”

Advisor Language



An Advisor may be, but is not required to be, an attorney.



A party's Advisor may be a friend, teacher, parent, professor, etc.



Parties have the option to include the Advisor in any meeting or interview.

“The College cannot guarantee equal advisory rights. Consequently, if one party selects an advisor who is an attorney, but the other party does not or cannot afford an attorney, the College is not obligated to provide an attorney or other advisor, except at the hearing. The College is not required to provide an attorney as an advisor at the hearing.”

Section XII, Florida Southern College Sexual Misconduct and Sexual Harassment Policy

Helpful Hint



ASK THE PARTY TO SHARE THE NAME OF THEIR CHOSEN ADVISOR

This allows the Title IX Coordinator to communicate with the Advisor and share information about the Title IX process. This also helps the Title IX Coordinator recognize if a Party is unable to find an Advisor and therefore assist in identifying an Advisor, if necessary.

Elements of the Notice of Allegations

4. *“Explanation of each party’s right to inspect and review all evidence gathered during the investigation.”*

5. *“Reference to the sections of this policy, and Student or Employee Handbook (if applicable) which prohibit knowingly making false statements or knowingly submitting false information during the grievance process.”*

Making False Statements

“The College prohibits parties, including complainants, respondents, and witnesses, from knowingly making false statements or knowingly submitting false information during the grievance process.

The College reserves the right to charge an individual with a conduct violation for making a materially false statement in bad faith during the course of the grievance process. Such charges do not constitute retaliation on behalf of the College against the individual as the individual has violated the College’s own policy. However, a determination regarding responsibility, alone, is not sufficient to conclude that an individual made a materially false statement in bad faith.”

Section XIX, Florida Southern College Sexual Misconduct and Sexual Harassment Policy

Elements of the Notice of Allegations

6. “Statement that the Respondent is presumed not responsible for the alleged conduct unless and until the determination of responsibility is final.”

7. *“Statement that a determination of responsibility is made at the conclusion of the grievance process.”*

8. Option for Informal Resolution, if permitted

Elements of the Notice of Allegations

9.

Notice and copy of the District's Title IX grievance process.

“Provide a copy of the College’s Policy on Sexual Misconduct & Sexual Harassment, which outlines the grievance process utilized to address alleged incidents of sexual harassment under Title IX.”

10.

“If, during the course of the investigation, the College decides to investigate allegations about the complainant or respondent that are not included in the initial notice provided to the parties, the College will provide written notice of the additional allegations to the parties whose identities are known”

Additional Elements in Policy

The policy also states the Notice of Allegations will include:

“List of on-campus and off-campus support resources for complainants.”

What about Respondents?

Helpful Hint



MAKE THE TITLE IX POLICY AND PROCEDURES ACCESSIBLE TO THE PARTIES

Include a hyperlinked URL to the applicable policy in the Notice, attach a digital copy of the policy to the email, and attach physical copy of the policy to the printed letter to the Parties.

Additional Elements to Include

- Provide basic information about Title IX and FSC's requirements under the Regulations
- Include an overview of the Title IX process and explain what happens next (e.g., interview with an investigator)
- Summarize the Parties' rights under Title IX (e.g., right to participate or refuse to participate in the process, right of a parent or guardian to act on behalf of a Party, right to supportive measures, etc.)

Additional Elements to Include

- Provide the name and contact information of the Title IX Coordinator and investigator (if known)
- Include a statement that retaliation is prohibited, and define retaliation under Title IX

Retaliation

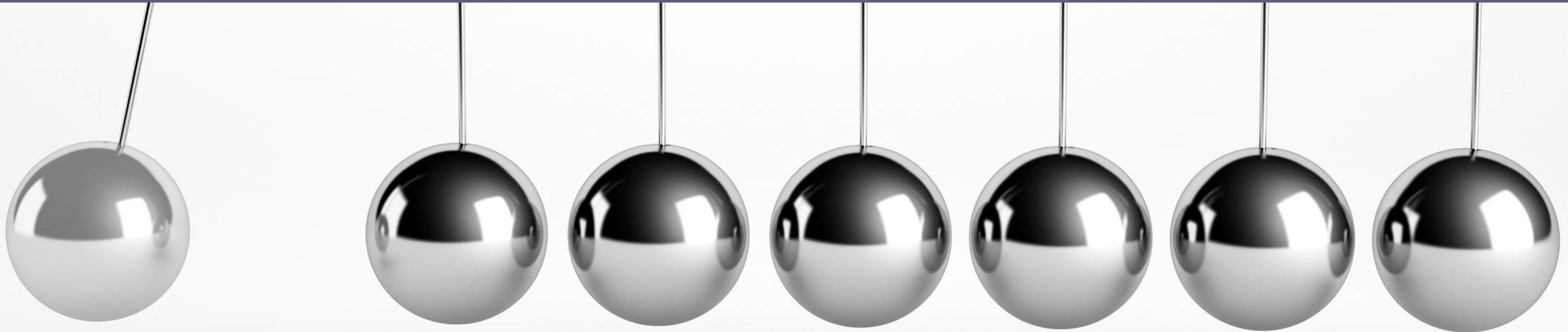
- Intimidating, threatening, coercing, or discriminating against any individual for either of the following reasons:
 - Intention to interfere with the individual's rights under Title IX; or
 - Because an individual has submitted a report or formal complaint, testified, assisted, or participated or refused to participate in the investigation, proceeding, or hearing under Title IX

"Complaints alleging retaliation may be filed with the College Title IX Co- Coordinators, which will be handled using the prompt and equitable grievance procedures available for non-sexual harassment sex discrimination complaints by students and employees, as referenced in the College's Policy on Non-Discrimination and Anti-Harassment."

Practical Tips

- Prepare the Notice of Allegations on FSC letterhead, then attach it to an email and send simultaneously
- Consider the reading level of the parties and do your best to use accessible language
- Make yourself available to Parties and the Advisors so they can ask questions, discuss the process, etc.
- Proofread this Notice! Misspellings impact trust and confidence

Initiating the Title IX Grievance Process



A formal complaint has been filed. Now what?

In addition to preparing the Notice of Allegations, the Title IX Coordinator is responsible for initiating the Title IX process. Key responsibilities include:

- Engaging Title IX team members
- Contacting Parties' Advisors
- Communicating with the Parties

Engaging Title IX Team Members

Select team members:



Title IX
Investigator



Decision-
Maker



Appellate
Decision-Maker



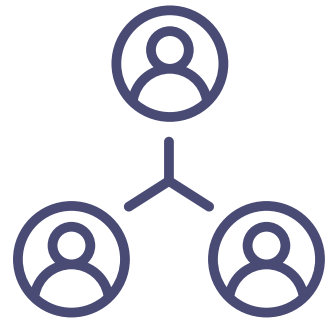
Informal Resolution
Facilitator
(optional)

Share with team members the following information:

- Date of the formal complaint
- Potential timeline of the grievance process and their expected participation
- Confidentiality requirements
- Reminder that all Title IX personnel are prohibited from having a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent participating in the process
 - Provide the names of the Complainant and Respondent
 - Inform Title IX personnel that they must contact you immediately and recuse themselves from the case if they have a conflict of interest or bias
- Copy of the *Sexual Misconduct and Sexual Harassment Policy*

Contacting the Parties' Advisors

With the party's permission, contact each Advisor to provide the following information:



Explain your role as the Title IX Coordinator



Explain their role and responsibilities as an Advisor



Provide a copy of the *Sexual Misconduct and Sexual Harassment Policy*



Provide Advisor guidelines and explain confidentiality and information sharing



Invite to a meeting or phone call to answer questions and discuss process

What if a Party doesn't have an Advisor?

Communicating with the Parties

Facilitate a transparent and trustworthy process by providing regular updates to the Parties.

Supportive Measures

Check in to confirm supportive measures are meeting the Party's needs and/or offer alternative measures

Status Updates

Provide status updates, explain which stage of the Title IX process is taking place, and outline what to expect in the coming weeks.

Introductions

Share the name of the Title IX investigator, decision-maker, appellate decision-maker, and informal resolution facilitator, when appropriate

Availability

Reiterate the Title IX Coordinator's role and availability to answer questions in person, via email, etc.


What else should
we do when
initiating the Title
IX grievance
process?

Let's discuss together.

- › Do we need to confer with colleagues about a difficult case?
- › Do we need to conduct another safety and risk assessment?
- › What does your team do now?

Questions?



A black and white photograph of a fountain pen lying on a lined notebook page. The pen is positioned diagonally across the page, with its nib pointing towards the top left. The background is a dark, textured surface.

Role of the Title IX Coordinator in Investigations and Hearings

Guiding Principles

During the investigation, decision-making, and informal resolution stages, the Title IX Coordinator must:

Provide prompt and equitable communication and facilitation of the processes.

Remain free of conflict of interest and bias.

Serve impartially without prejudging the facts.

34 CFR §106.45(b)(1)

Key Communication Points in Investigation Stage

Notice of Investigative Interviews

“This written notice will include the date, time, location, names of participants, and purpose of the meeting 5 days prior to the meeting, providing the party with sufficient time to prepare.”

Invitation to review and respond to the investigation file

“The parties will have 10 days to submit a written response regarding the investigation evidence”

Furnishing the investigative report

“Upon completion, investigator will send the investigative report to each party and the party’s advisor, if any, at least ten (10) days prior to a scheduled hearing, in electronic format or hard copy. Upon review, the parties may submit a written response to the decision-maker not less than five (5) days prior to the scheduled hearing, with a copy to the other party and their advisor.

Key Communication Points in Decision-Making Stage

Providing live hearing procedural rules

“The College will provide specific procedural rules for the live hearing to the parties and their advisors at least 10 (ten) days prior to the scheduled hearing.”

Issuing a written determination

“The decision-maker(s) will issue the written determination to the parties simultaneously no more than 15 (fifteen) days after the conclusion of the live hearing. Copies will be sent to the parties and their advisors by email, certified mail, or overnight delivery service such as Federal Express, with receipt of acknowledgement.”

Key Communication Points in the Informal Resolution Process

Notice of Informal Resolution Option

“In order for the College to proceed with informal resolution options, the College will:

A. Provide the parties with a written notice disclosing the following:

i. The allegations;

ii. The requirements of the informal resolution process, including the circumstances under which the informal resolution process would preclude the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint; and

iii. Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;

B. Obtain voluntary, written consent from the parties to the informal resolution process

The College will provide the parties with the specific guidelines corresponding to the various informal resolution options prior to the parties signing a written consent to the informal resolution process.”

Other Required Communication in These Stages

New allegations discovered:

"If, in the course of an investigation, the recipient decides to investigate allegations about the Complainant or Respondent that are not included in the [initial notice of allegations], the recipient must provide notice of the additional allegations to the parties whose identities are known."

34 CFR §106.45(b)(2)(ii)

New allegations discovered = revised notice of allegations must be sent

Other Required Communication in These Stages

Requests for meetings:

"Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate."

34 CFR §106.45(b)(5)(v)



"The College will provide written notice to a party who is invited and expected to participate in any investigative interviews, hearings, or other meetings. This written notice will include the date, time, location, names of participants, and purpose of the meeting 5 days prior to the meeting, providing the party with sufficient time to prepare." -FSC Policy

Other Required Communication in These Stages

Delay for good cause:

"...a process that allows for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the Complainant and the Respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities;"

34 CFR §106.45(b)(1)(v)

Notice of dismissal (for mandatory or discretionary reasons):

Upon a dismissal required or permitted pursuant to paragraph (b)(3)(i) or (b)(3)(ii) of this section, the recipient must promptly send written notice of the dismissal and reason(s) therefore simultaneously to the parties.

34 CFR §106.45(b)(3)(iii)

Prompt and Equitable Communication



What does this look like?

- Email both Parties on a regular basis about the status of the grievance process (weekly, biweekly, and as needed)
- Check in with both Parties to assess academic needs or need for additional supportive measures



Remember to save all correspondence for recordkeeping.

Serving Impartially



What does this look like?

- Designate a deputy to facilitate if you have a special relationship with a party
- Treat the Complainant and Respondent the same with respect to information-sharing, updates, opportunities, and demeanor
- Check in with yourself to make sure you are not influenced by how a party is treated based on the allegations or power dynamics
- Monitor processes to ensure investigators, decision-makers, IR facilitators, and appeal officers are serving impartially, free from conflict and bias

Tips for Serving Impartially

1

Examine and recognize your own biases.

2

Be mindful of your language...it matters!

3

Be honest about your conflicts and discomfort.

4

Remember that every person is worthy of dignity, respect, and compassion

IX

Coordinator Training Point

An investigation into a potential sexual assault in the hallway of an academic building has begun. The investigator requested security footage and it's taking a long time. A week has passed and security footage has not yet been provided.

Should the Title IX Coordinator provide an update to the parties? If yes, what could that communication look like?

New message



To kayleefisher@flsouthern.edu

Subject Title IX Investigation Update

Dear Kaylee,

On September 12, 2023, the investigator requested security footage from the Office of Information Technology Services. As of today, the investigator still has not received the requested security footage. I have inquired about the delay and will work to ensure that the requested footage is provided as soon as possible.

In the meantime, please let me know if you have any questions or concerns about this process or the impact of this process or situation on your participation in school.

I will provide another update as soon as possible.

Thank you,

Rick Gebauer
Title IX Coordinator
Florida Southern College

Send




Working With Investigators, Decision-Makers, and IR Facilitators

- Place the right personnel in the right roles, fit for each case is important.
- Serve as a resource for your Investigators, Decision-Makers, and IR Facilitators when they have questions during their stage.
- Check in frequently to discuss progress and next steps.

Working With Investigators, Decision-Makers, and IR Facilitators

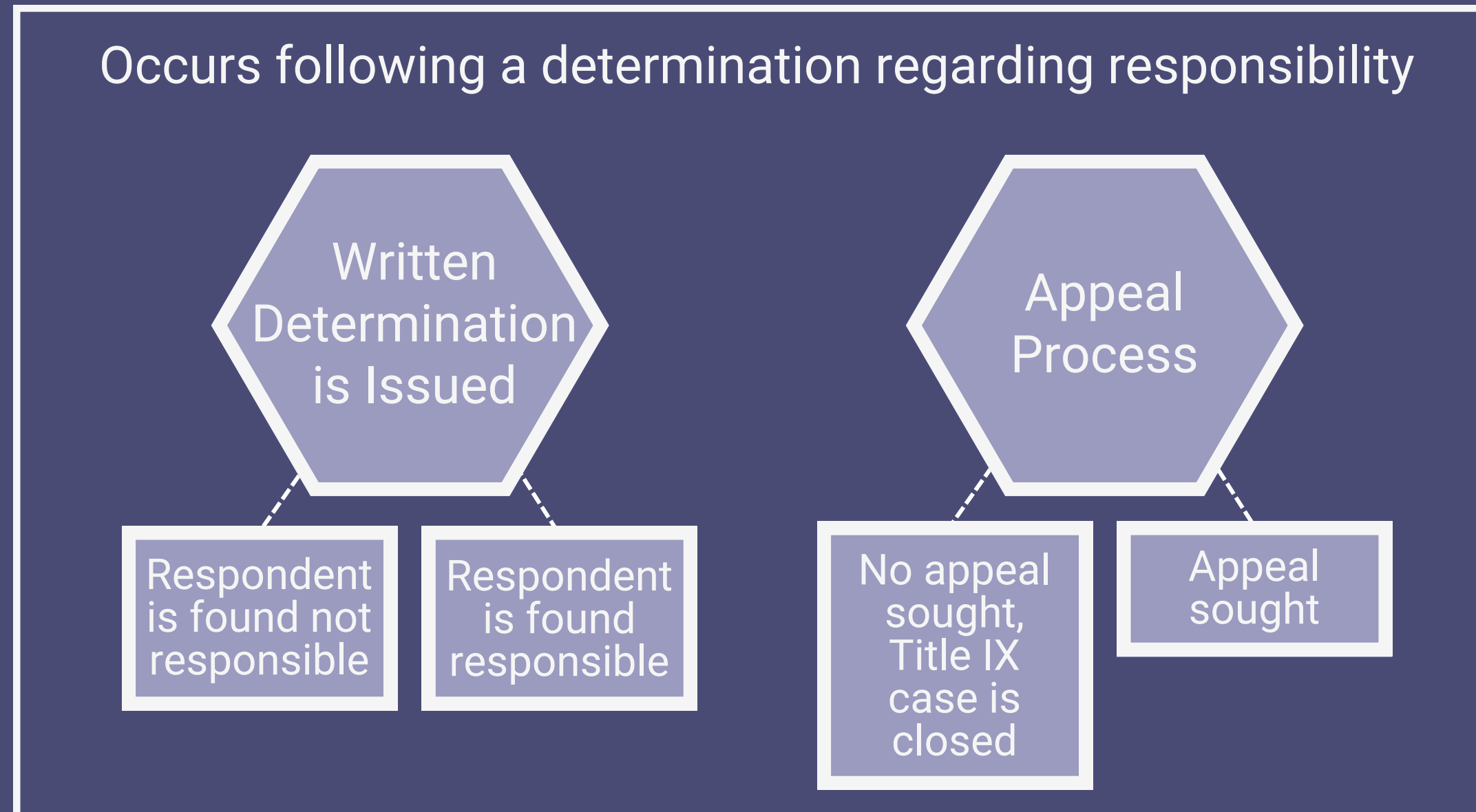
- Partner with Investigators, Decision-Makers, and IR Facilitators to review documents and ensure all procedural requirements are being followed.
 - Required notices and communication
 - Investigation report and file, provision of evidence
 - Written determination regarding responsibility
 - Informal resolution agreement



Title IX
Outcomes,
Sanctions and
Remedies

Possible Title IX Outcomes

Aside from initial review, which could include adjudicating a matter under a non-Title IX policy and dismissal of formal complaints, these are the potential outcome points for a Title IX complaint:



Title IX Requirements

Title IX Regulations require schools to do the following:

"Describe the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies that the recipient may implement following any determination of responsibility."

34 CFR §106.45(b)(1)(vi)

"The sanction/remedy must be accompanied by a written rationale detailing the result as to each allegation, a determination regarding responsibility, any disciplinary sanctions the school imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the school's education program or activity will be provided to the Complainant."

34 CFR §106.45(b)(7)(ii)(E)

Title IX Requirements

Title IX Regulations require schools to do the following:

Implement sanctions and/or remedies that restore or preserve the Complainant's equal access to the school's education program or activity, if a Respondent is found responsible.

"Include the procedures and permissible bases for the complainant and respondent to appeal."

34 CFR §106.45(b)(1)(viii)

Outcomes Following the Written Determination



If the Respondent is not found responsible, the College may continue to offer supportive measures to the Complainant where practical.

- Engage in a conversation with the Complainant (and parents/legal guardians) to determine what is needed and for what length of time.
- Revisit this conversation at regular intervals to gauge the need for continued measures.

If the Respondent is found responsible, sanctions and remedies will be put into place.

Range of Sanctions

This is the range of sanctions listed in Florida Southern College's *Sexual Misconduct & Sexual Harassment Policy*:



 Employee sanctions may also include suspension and termination

A circular icon with a purple-to-blue gradient background, containing the Roman numeral IX in white. The icon is positioned at the top left of the slide, partially overlapping a white rectangular box that contains the title.

IX

Coordinator Training Point

Who will ultimately be responsible for determining student sanctions if the Respondent is found responsible? What if the Respondent is an employee?

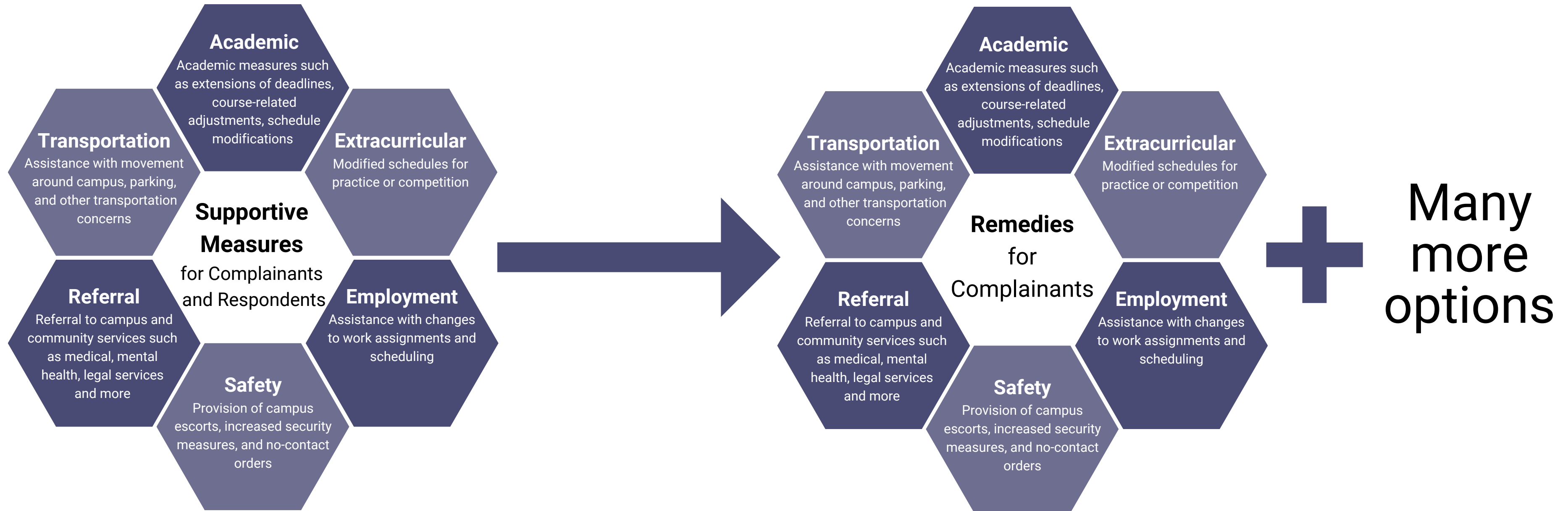
What Are Remedies?

- Implemented following the determination that the Respondent was responsible.
- Intended to restore Complainant's access to the educational program or activity.
- Unlike supportive measures, remedies can burden the Respondent.

"The details of remedies provided to the Complainant remain part of the Complainant's education record and not the Respondent's education record, unless the remedy also imposes requirements on the Respondent."

(p. 1458 Preamble to the Title IX Regulations)

Remedies may simply be a continuation of supportive measures already in place or entirely new measures implemented.



“Possible remedies include, but are not limited to:
Improved campus lighting; Educational programming; Staff training;
Campus climate assessments” -*FSC Policy*

Required Bases for Appeal

Title IX Regulations require every school to utilize these bases for appeal:

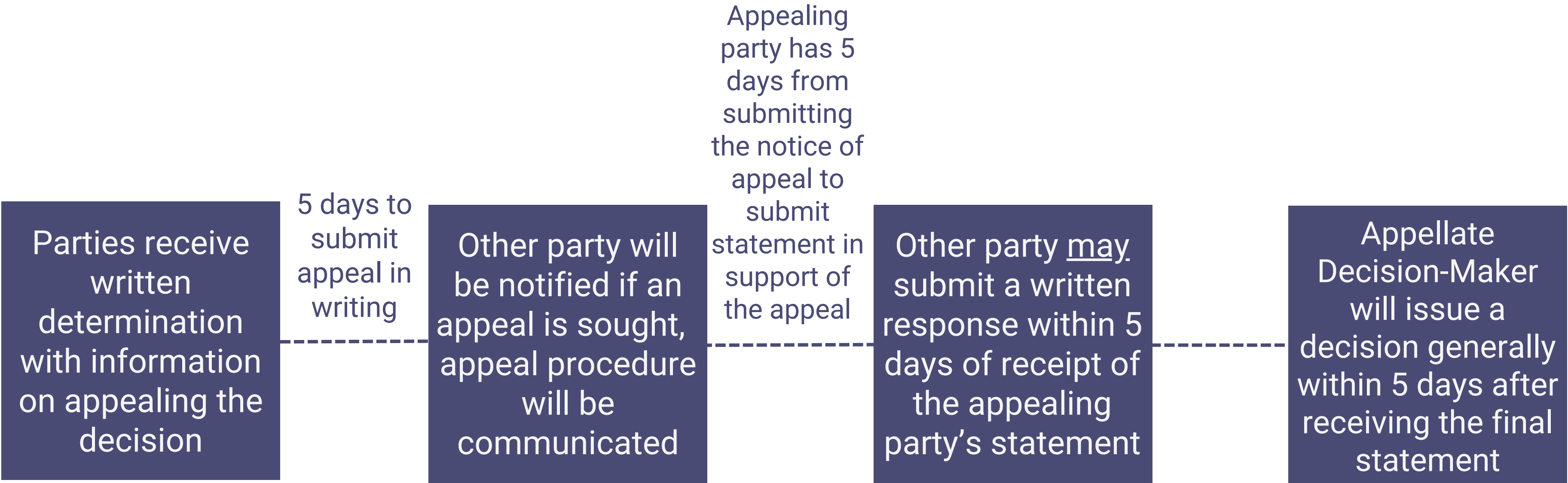
- A** Procedural irregularity that affected the outcome of the matter;
- B** New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- C** The Title IX Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.

34 CFR §106.45(b)(8)

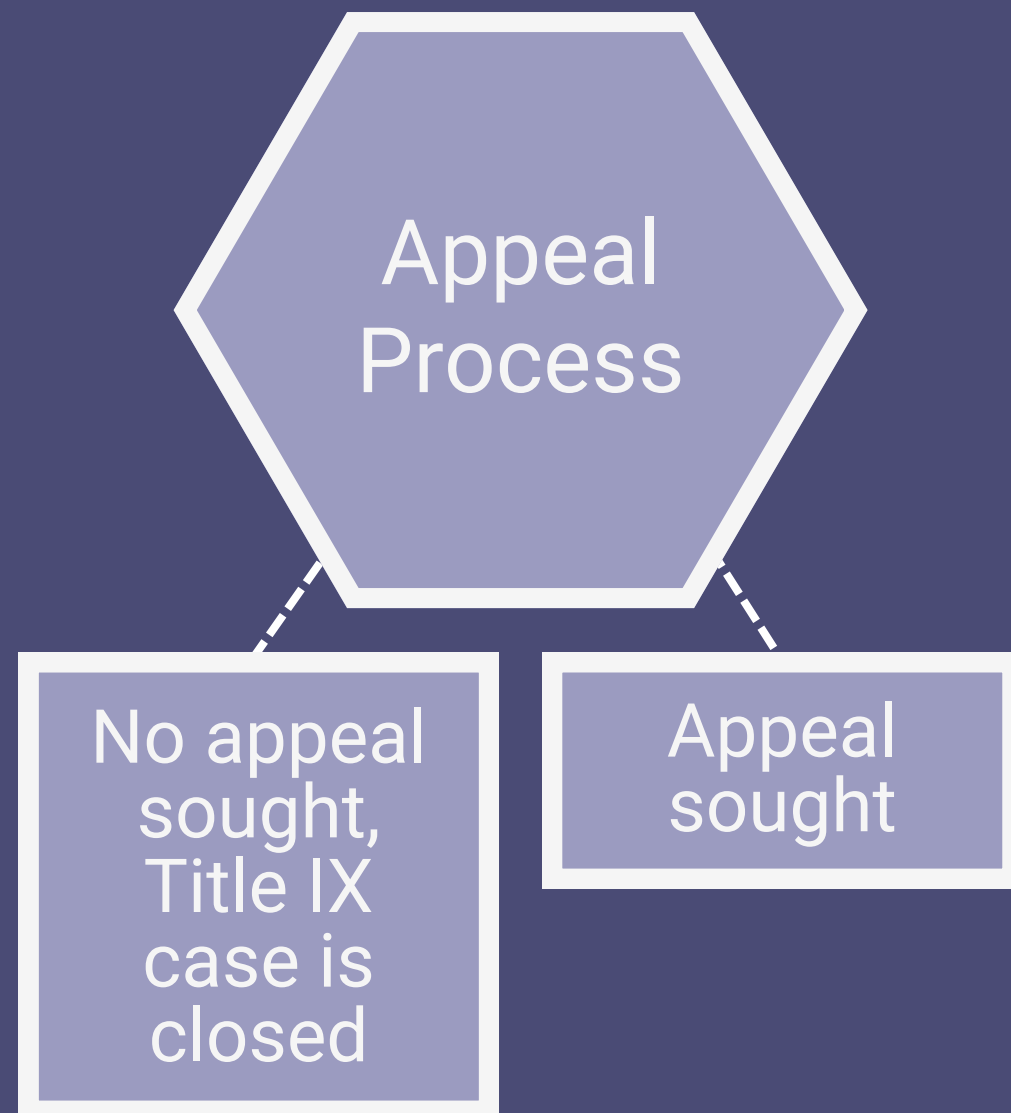


Florida Southern College does not offer any additional bases of appeal.

Appeal Process at Florida Southern College



Appeal Process Outcomes



If one or both Parties does not seek an appeal or does not submit an appeal within the 5 days outlined in FSC policy, the case will be closed and the determination stands.

If one or both Parties seeks an appeal, the basis of appeal will be reviewed. If it is approved, an Appellate Decision-Maker will make a determination, which could result in:

- A new investigation
- A new hearing
- Overturning the decision regarding responsibility

Informal Resolution Options



What is informal resolution under Title IX?

Informal Resolution Cornerstones

Informal resolution under Title IX provides Parties the opportunity to resolve complaints outside of the formal grievance process.

Informal resolution processes are to be:

TRANSPARENT

- Provide clear, consistent communication to the Parties

SAFE

- Provide emotional and physical safety
- Conduct safety and risk analysis (optional)
- Put safety measures in place (optional)

VOLUNTARY

- Obtain voluntary, written consent
- Highlight right to withdraw prior to the agreement



Who is involved in the informal
resolution process?

Informal Resolution Participation

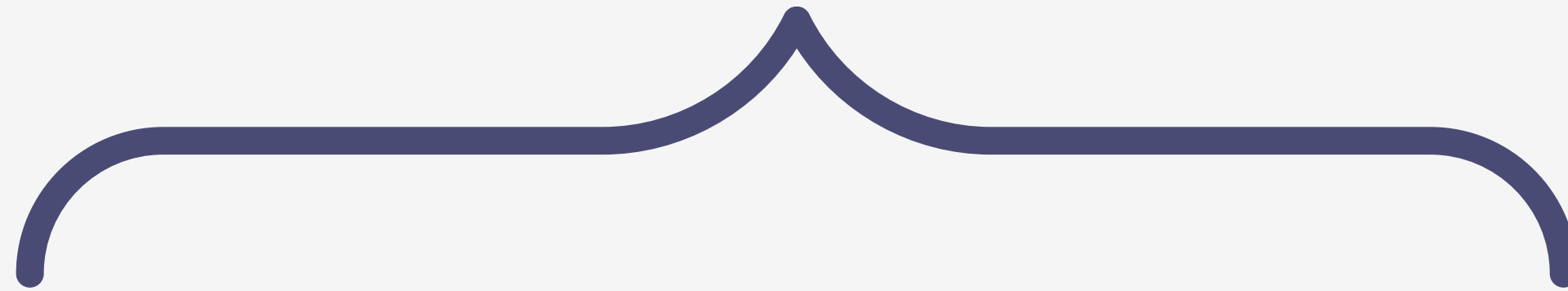
- Under Title IX, schools must obtain the Parties' written, voluntary consent to participate in the informal resolution process
- Informal resolution is not permitted to resolve allegations that an employee sexually harassed a student
- Advisors are permitted to participate, but the school may impose restrictions on participation
- Emergency Removal may be considered, if appropriate



When can informal resolution take place?

INFORMAL RESOLUTION

(MAY BE INITIATED IN THIS WINDOW)



A Party may withdraw from the informal resolution process at any time and proceed with the formal grievance process.

INTAKE/
REVIEW

NOTICE OF
ALLEGATIONS
SENT TO PARTIES

INVESTIGATION

HEARING

WRITTEN
DETERMINATION

APPEALS
PROCESS

Title IX Grievance Process



Should there be a defined amount of
time for the informal resolution
process to occur?

Reasonably Prompt Time Frames

"Include reasonably prompt time frames for conclusion of the grievance process, including reasonably prompt time frames for filing and resolving appeals and informal resolution processes if the recipient offers informal resolution processes, and a process that allows for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the Complainant and the Respondent of the delay or extension and the reasons for the action."

§106.45 (b)(1)(v)



Florida Southern College's policy does not have specific timeframes in place for informal resolution processes.



Where can informal resolution take
place?

Informal Resolution Location



VIRTUAL



ON CAMPUS



OFF CAMPUS



IN WRITING



Why is informal resolution permitted
under Title IX?

Benefits to Parties and Institutions

Informal resolution has the potential to:

- Empower Complainants and Respondents to address incidents through a process that best suits their needs
 - Parties determine the outcome
 - Resolution can be creative
- Enhance institutional and Party autonomy by providing schools and Parties with flexibility in addressing unique situations
- Provide a more timely and less expensive option than the live hearing or decision-making process
- Present an opportunity to educate and change behavior
- Allow for confidential results
- Yield remedies which are more customized to the needs of the unique situation and involved Parties



What are the goals of the Parties as they participate in informal resolution processes?

Goals for the Parties



- Undergo a less intimidating process than the grievance process
- Explore potential for less harsh outcomes
- Provide input regarding outcomes of the process
- Minimize re-traumatization
- Reduce embarrassment for both Parties
- Allow an opportunity for interaction and open dialogue
- Participate in a more personal experience



What should informal resolution
processes look like?

What do the Title IX Regulations say about informal resolution?

"A recipient may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with this section. Similarly, a recipient may not require the Parties to participate in an informal resolution process under this section and may not offer an informal resolution process unless a formal complaint is filed."

§ 106.45(9)

What does this mean?

- ◆ Schools cannot take away a Parties' right to an investigation and adjudication process following a formal complaint of sexual harassment.
- ◆ Schools cannot require any Party to participate in an informal resolution process. It is a 100% optional process and requires buy-in from both Parties.
- ◆ The informal resolution process can only take place once a formal complaint has been filed.

"However, at any time prior to reaching a determination regarding responsibility the recipient may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication..."

§ 106.45(9)

Final Complaint
Received

INTAKE/
REVIEW

NOTICE OF
ALLEGATIONS
SENT TO PARTIES

INVESTIGATION

DECISION-
MAKING
PROCESS

WRITTEN
DETERMINATION

APPEALS
PROCESS

RECALL: Informal Resolution can happen
at any point within this timeframe.

"However, at any time prior to reaching a determination regarding responsibility the recipient may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication..."

§ 106.45(9)

Provides to the Parties a written notice

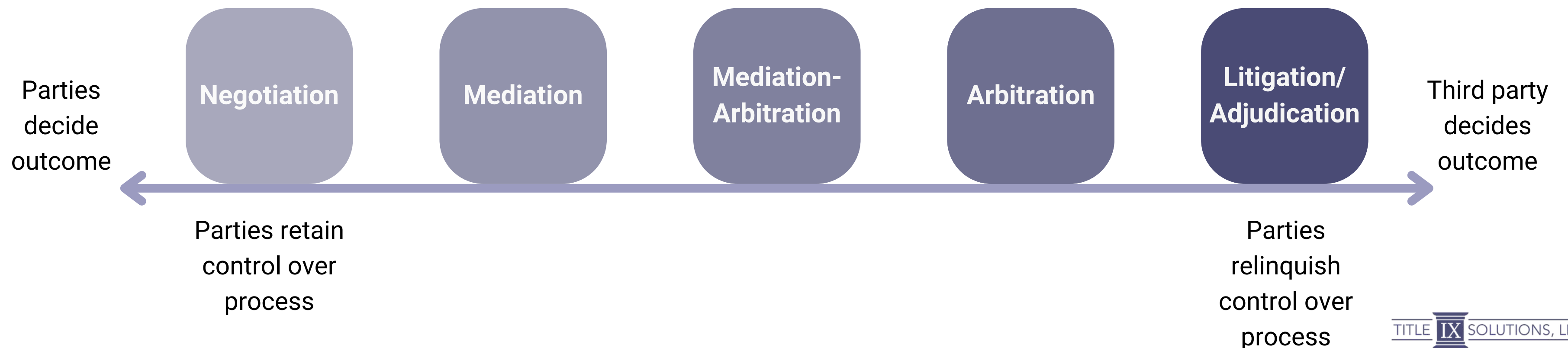
Obtains the Parties' voluntary, written consent to the informal resolution process

Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student

Types of Informal Resolution

The Title IX Regulations do not specify the exact processes institutions must use to carry out the informal resolution function.

Instead, they provide flexibility for institutions to determine which processes best suit their needs and provide the opportunity to craft custom institutional processes.





Which types of informal resolution are most common in a school setting?



Common school-based informal resolution processes

Joint sessions,
private meetings,
or combination

Mediation

Restorative
Justice

Other Custom Institutional Options

Schools may design and implement hybrid and customized processes to fit their needs. These processes must:

Follow the requirements set forth by the Title IX Regulations

Not be in conflict with other state laws or school policy

Utilize properly trained Informal Resolution Facilitators

Be fully explained to the Parties in a notice before they consent to participate

What is the role of the Informal Resolution Facilitator?



Serving neutrally, impartially



Facilitating the conversation between Parties



Providing physical and emotional safety

Training Informal Resolution Facilitators

"The same [training] requirements that apply to Title IX Coordinators, Investigators, and Decision-Makers now also apply to any individuals who facilitate informal resolution processes."

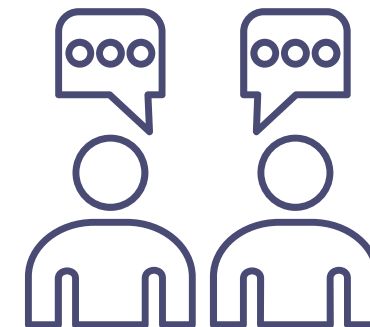
(Preamble to the 2020 Title IX Regulations, p. 1369)



Title IX
definition of
sexual
harassment



Scope of the
education
program or
activity



How to
conduct
informal
resolution
processes



How to serve
impartially

Who may serve as the Informal Resolution Facilitator?

The Title IX Coordinator is not precluded from serving as the Informal Resolution Facilitator.

Potential Challenges

- Perceived or actual conflict of interest and/or bias
- Confusion of dual role

Questions to Consider

- ① Why has the Title IX Coordinator been assigned as the IR Facilitator?
- ① Is the Title IX Coordinator truly comfortable fulfilling this role?
- ① Does the Coordinator have the necessary skills to fulfill this role?

Who may serve as the Informal Resolution Facilitator?


The Investigator and Decision-Maker may not serve as the Informal Resolution Facilitator in the same case.

Rationale

- Allows Investigators and Decision-Makers to remain unbiased should the Parties return to the formal grievance process
- Eliminates role confusion
- Ensures Facilitators are present to facilitate the conversation – not gather evidence or make a decision prior to or after



Best Practice: Separate this role from all other Title IX roles and provide clarity on the responsibilities of the Informal Resolution Facilitator.



Additional
Implementation
Considerations

Title IX Personnel



Title IX Roles

Except for the Title IX Coordinator, Title IX personnel may be internal (from the campus community) or external (local attorneys, consultants, etc.).



Title IX
Coordinator



Deputy
Coordinators



Investigator



Decision-
Maker



Informal
Resolution
Facilitator



Appellate
Decision-Maker



Require all Title IX personnel
have specific training.

Applies to an individual designated as a Title IX Coordinator, Investigator, Decision-Maker, Appeals Decision-Maker and Informal Resolution Facilitator.

Includes training on the definition of Title IX sexual harassment, scope of the school's education program or activity, how to conduct the grievance process, and how to serve impartially, including prejudgment of facts at issue, conflicts of interest, and bias.

Key Compliance Requirement



Require all Title IX personnel
have specific training.

Decision-Makers and Investigators must receive additional training on issues of relevance to adequately fulfill their roles.

Materials used to train Title IX personnel must not rely on sex stereotypes and must promote impartial investigations and adjudication of formal complaints of sexual harassment.

Key Compliance Requirement



Require that all Title IX personnel not have a conflict of interest or bias.

Applies to an individual designated as a Title IX Coordinator, Investigator, Decision-Maker, Appeals Decision-Maker and Informal Resolution Facilitator.

Includes not having a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.

Key Compliance Requirement

What constitutes a conflict of interest?

- Conflicts of interest arise when there is a real or perceived personal or private interest that may prevent a Title IX Coordinator, Investigator, or Decision-Maker from carrying out their role impartially.
- Conflicts of interest are not explicitly defined under the Title IX regulations.
- Conflicts of interest may be more difficult to navigate within smaller institutions.

Examples of Potential Conflicts



Personal relationship with a Party or parent/guardian of a Party

Example: A Title IX Investigator is close family friend and has known the Party for years and outside of the academic program.



Position of power over a Party not related to the Title IX process

Example: The assigned Title IX Decision-Maker is one of the Party's coaches in a scholarship sport.

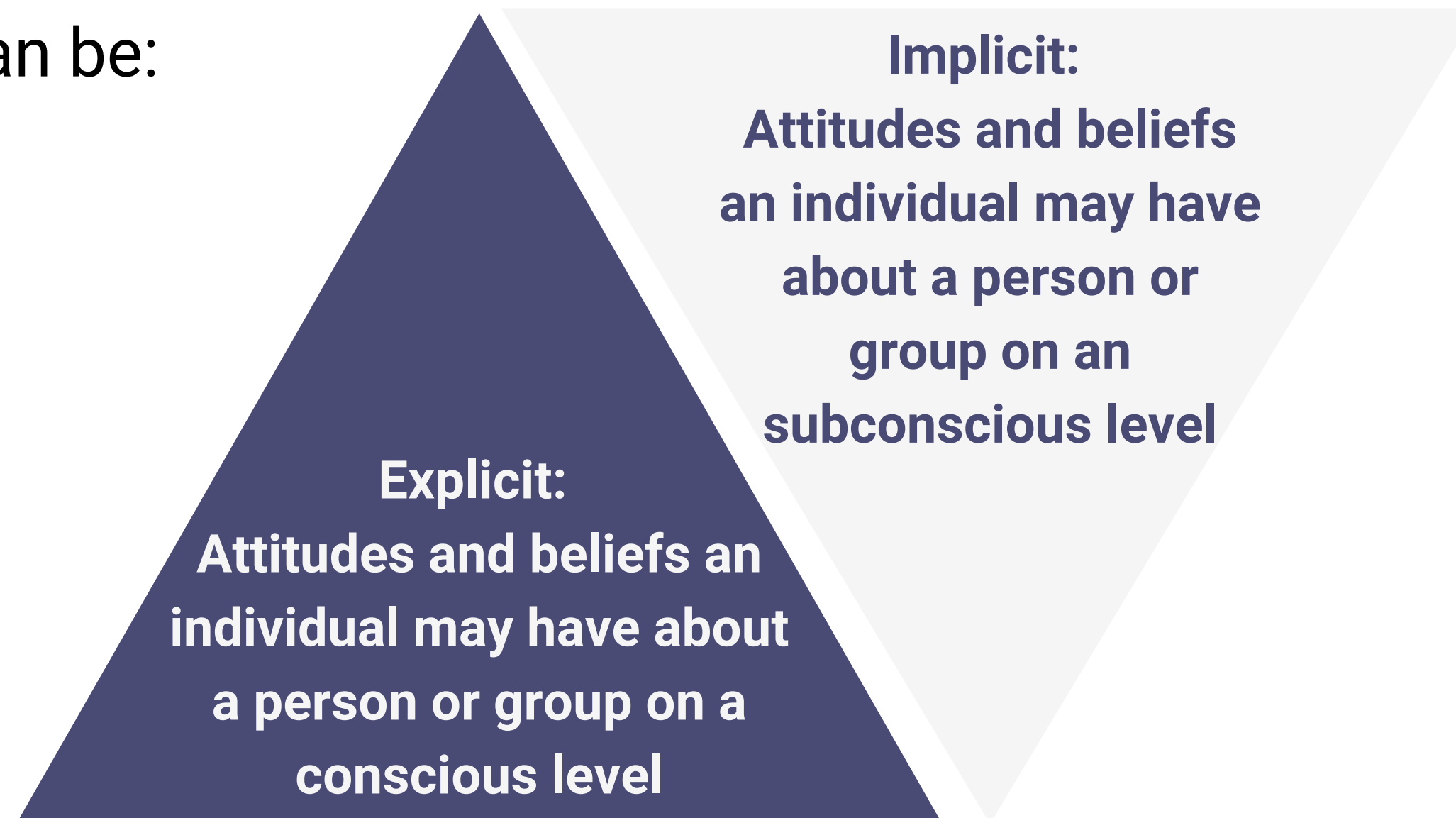


Previous knowledge about a Party that could impact the ability to investigate or adjudicate the case

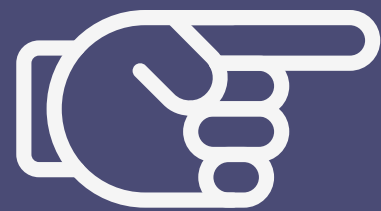
Example: An Informal Resolution Facilitator is a former professor of a Party and had a difficult experience with the Party.

What constitutes a bias?

- Title IX Regulations specifically reference "bias for or against Complainants or Respondents generally, or for or against an individual Complainant or Respondent."
- Biases can be:



Examples of Potential Biases



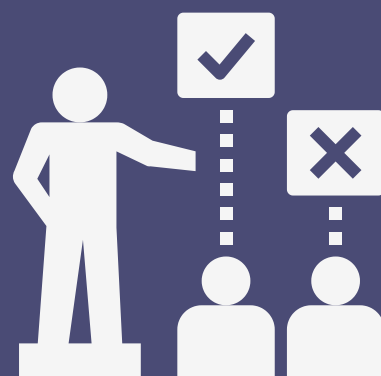
Prejudgment

Example: A Decision-Maker, upon hearing the summary of an upcoming case and before hearing all relevant facts, has formed an opinion believing the Respondent to be responsible for the alleged conduct.



Bias for or against Complainants or Respondents generally

Example: A Title IX Investigator also serves as a volunteer advocate at the local Rape Crisis Center and frequently and publicly makes posts on social media about "believing all survivors."



Bias for or against a specific Complainant or Respondent

Example: A Title IX Coordinator has a known set of religious beliefs that create bias against a Complainant who identifies as a member of the LGBTQ+ community.

Confidentiality



Confidentiality Requirements



The Recipient must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.



Required Reporting in Florida

“

In compliance with federal, state, and local requirements and college policy, certain crimes shall be reported to the Director of Campus Safety and Security for Clery reporting and other tracking purposes and, when permissible, such reports may not include the reporting party's name unless authorization is granted by the offended party. When required, reporting will be made to other organizations such as the Florida Department for Children and Families at <http://reportabuse.dcf.state.fl.us> or 1-800-96-ABUSE.

”

Recordkeeping



Recordkeeping Requirements

Recipients must maintain for a period of seven years records of the following:

- Each sexual harassment investigation and any determination regarding responsibility
 - Any audio or audiovisual recording or transcript of the live hearing
 - Any disciplinary sanctions imposed upon the Respondent
 - Any remedies provided to the Complainant
- Any appeal and the result therefrom
- Any informal resolution and the result therefrom
- All materials used to train Title IX Coordinators, investigators, Decision-Makers, and Informal Resolution Facilitators
 - Training materials must be made publicly available on the Recipient's website



Recordkeeping Requirements

For each response to a report of sexual harassment, the Recipient must create and maintain for a period of seven years the following:



- Records of any actions, including supportive measures, taken in response to a report or formal complaint of sexual harassment
- Documentation of the basis for its conclusion that its response was not deliberately indifferent
- Documentation that the Recipient has taken measures designed to restore or preserve equal access to their education program or activity
- If no supportive measures are provided, Recipient must document the reasons why such a response was not clearly unreasonable in light of the known circumstances

FLORIDA SOUTHERN COLLEGE

TITLE IX INVESTIGATOR WORKSHOP



Training Agenda

Title IX Investigator Workshop

8:30 a.m. - 8:45 a.m. | Welcome

8:45 a.m. - 9:45 a.m. | Guidelines for Title IX Investigation Questions

9:45 a.m. - 10:00 a.m. | Break

**10:00 a.m. - 11:30 a.m. | Conducting Title IX Interviews-
Workshopping**

11:30 a.m. - 11:45 a.m. | Break

**11:45 a.m. - 1:00 p.m. | Preparing the Investigation
Report and File**

1:00 p.m. - 2:00 p.m. | Lunch Break

Learning Objectives

As a result of this training, participants will be able to:

Understand investigation procedural requirements under Title IX

Understand the steps to drafting a Title IX investigation report

Identify steps to designing and executing a thorough Title IX investigation

Understand the steps to compiling a thorough investigation file

Identify helpful verbal and non-verbal communication strategies to improve the effectiveness of Title IX interviews

Guidelines for
Title IX
Investigation
Questions



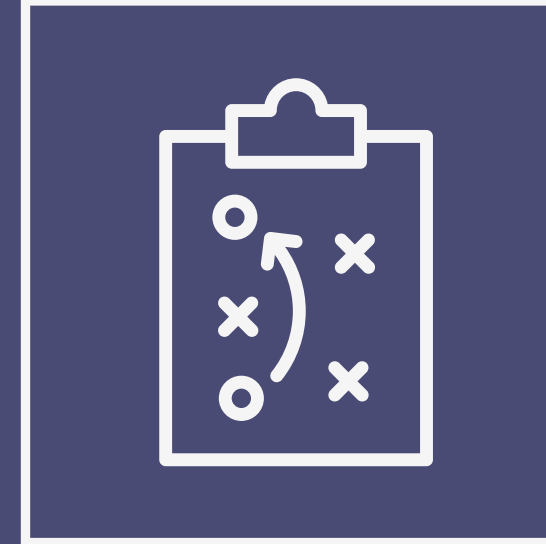
In This Session



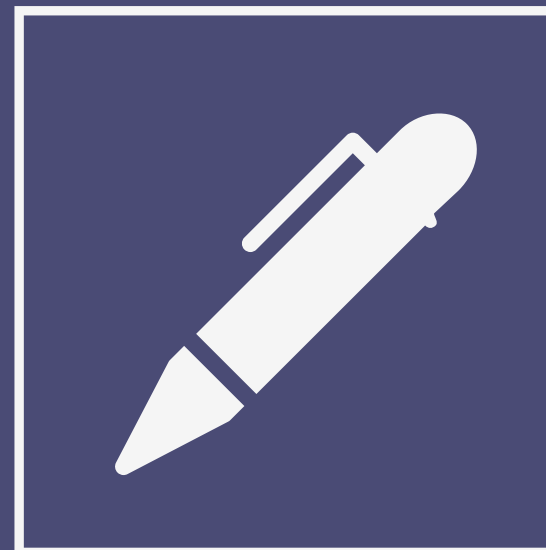
RECORDING
INTERVIEWS



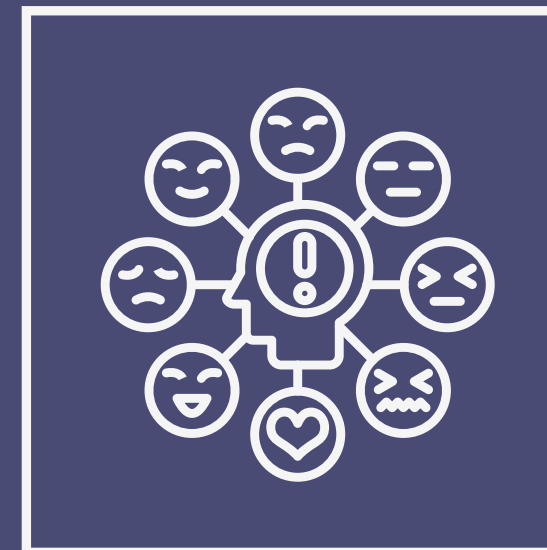
PREPARING A
PREAMBLE



PREPARING THE
INTERVIEW PLAYBOOK

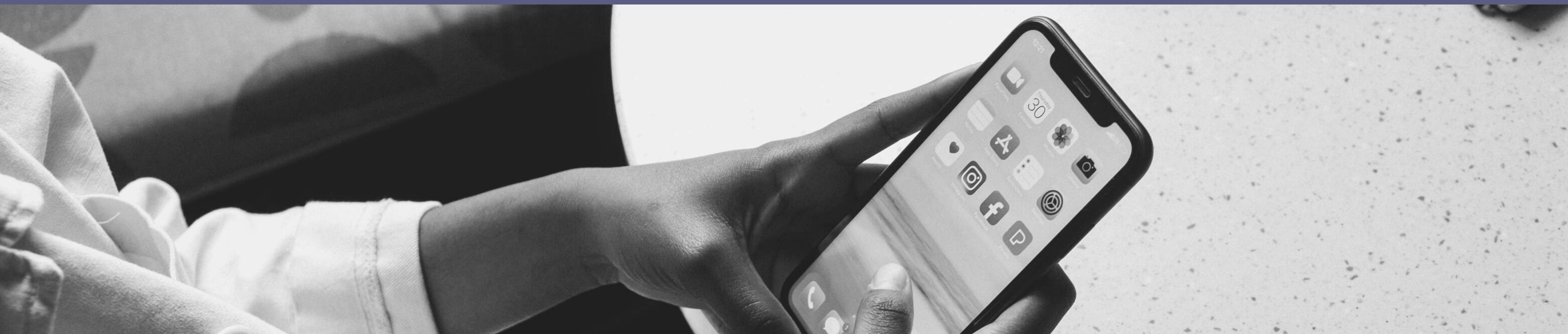


CRAFTING SOUND
TITLE IX INTERVIEW
QUESTIONS



UNDERSTANDING
EMOTIONS OF THE
PARTIES

Recording Interviews



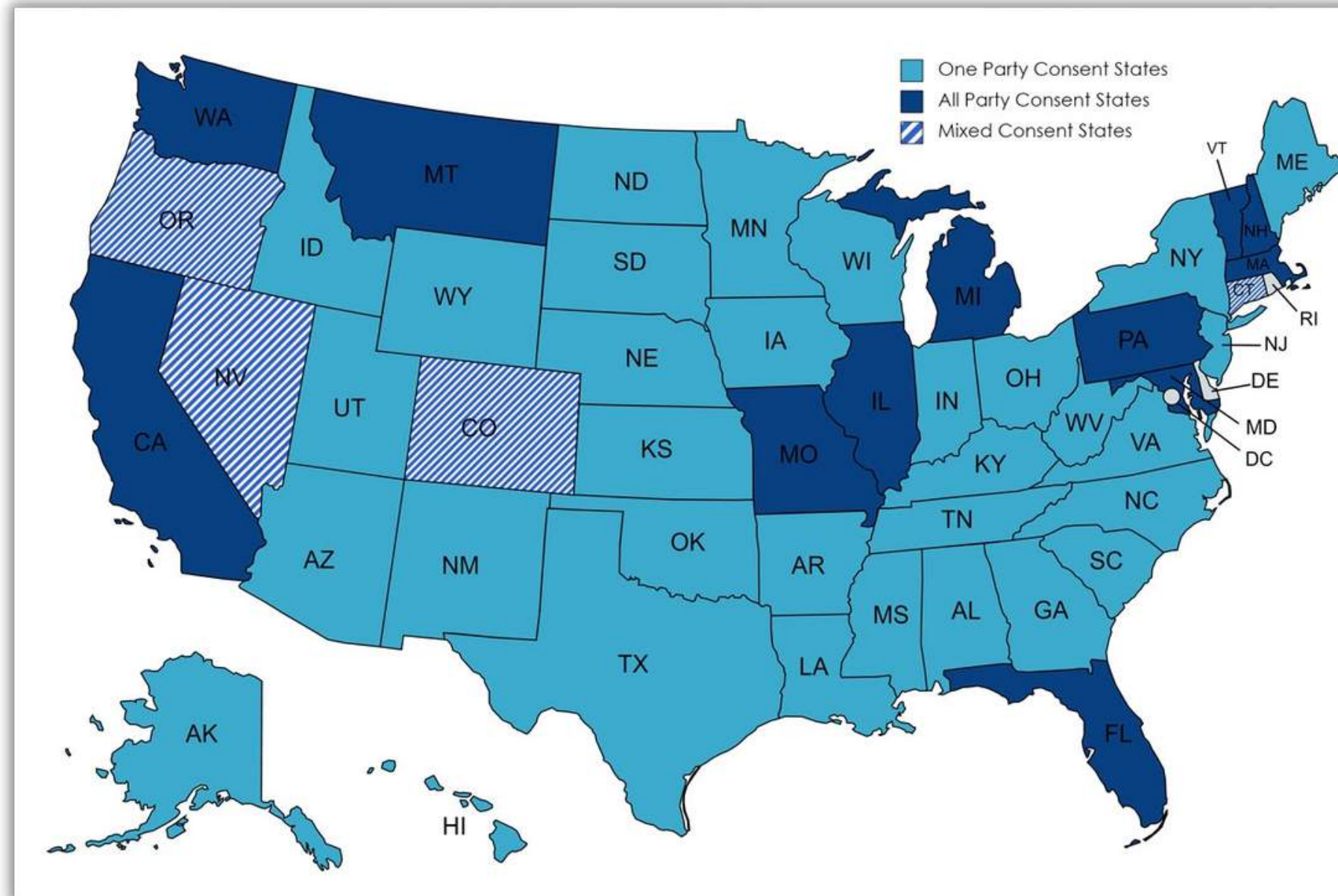
Recording Best Practices

What do you see as the pros and cons to recording?

Best practices include:

- Obtain consent from the interviewed Party and any others present
- Use a recording device
- Have the interview transcribed
- Share transcript and recording of interview with the Parties and Advisors
- Include transcription and audio recording in the final investigation report and/or file

Obtaining Consent



- Florida is an all-party consent state- all parties involved in a private conversation must consent to the recording of that conversation
- Prepare for what you will do if a Party does not give consent to record

FSC Policy states:

“No audio or video recording of any kind other than as required by institutional procedure is permitted during meetings with College officials.”

Transcription

Transcripts will provide quotes and narratives for investigative report

- Provides a complete word-for-word record of the investigative interviews
 - Does not contain paraphrasing of questions or responses
 - May contain grammatical or syntax errors depending on speech of parties
- Should be provided to the parties for review before including in the investigation file

Transcription by a service vs. self-transcription



Cost



Accuracy



Efficiency

Preparing a Preamble



What is a Preamble?

- Read by Investigator at the beginning of the interview
 - State date, time, purpose of the interview, location, persons present and verbal consent of all persons participating
 - Ask each person to state their name for later voice identification during transcription
 - Read the time and date onto the recording at the end of the recorded interview to complete that record

What is a Preamble?

- Provides consistency in interviews for each Party or Witness
- Ensures consent, policy violations in question, relevant sections of the policy in question are on the record
- Helps if the Investigator is called as a witness during the hearing or litigation
- Assists in putting the party or witness at ease – they become used to Investigator's voice, presence, etc.

Other Elements to Include

- Explain investigative process (refer to policy) and roles and names of Title IX personnel (Coordinator, Investigator(s), Decision-Maker, etc.)
- Cover rights under Title IX and policy
- Inform party of their opportunity to share what actually happened
- Remind party of Advisor's role
- Provide clarification of policy, procedure, and timeline
- Establish meeting decorum (breaks, use of phone, etc.)
- Demonstrate the Investigator's comfort with difficult topics

Sample Preamble



Today's date is April 28, 2023, the time is now 1:00 PM (CST). My name is Susanna Murphy and I am a Title IX Investigator at Sample University. My goal here is to conduct a prompt, thorough, and impartial investigation into this matter. I am joined by Adrienne Mathis who will be serving as the co-investigator in this case. Adrienne is also a Title IX Investigator at Sample University.

This is a recorded interview of Jordan Reynolds, who is identified as the Respondent, and we are meeting virtually, via Zoom.

Jordan, thank you for being here today. As I just mentioned prior to beginning to record, we are recording this meeting so I would like to ask you and your Advisor to state your name and to spell it and to state on the record that you consent to being recorded today.

A written transcript of today's interview will be provided to both parties as part of the investigation file at the end of the investigation. This recording and transcription of every interview will also be included in the final investigative file. -->

Before we start with more formal questions, I would like to say that I am sorry that we are meeting under these circumstances. I know this is a difficult process and I appreciate you joining me today. I'd like to just briefly review both what my role is and what your role is here today.

My job is to be an impartial gatherer of facts that I eventually will organize and turn into a report for the decision maker to review. I will be asking you a lot of questions today because I want to be sure that the decision maker has all the information they need in order to make a decision in this case. I do not have an opinion about what happened or any sort of judgement about what you share with me today. And I will not weigh in on the outcome. There may be occasions on which I ask a question such as, "Did you do anything at that point" or "Did you say anything at that point". Please understand that, by asking that question, I am not suggesting that you should or should not have. I just want to be able to share with the decision-maker if you did.

Your job is to answer the questions as honestly and thoroughly as possible. It is likely you will not know the answer to every question I ask and that is okay. Please just say if you don't know or if you do not remember. I would ask you not to guess unless you think it is appropriate to guess in the circumstance in which case, please indicate that you are guessing or estimating. If you do not understand a question of mine, please ask me to repeat it rephrase it.

Some of my questions may be of a personal or intimate nature but I hope you will feel comfortable sharing with me all the details. I want you to know that nothing you say today will shock or offend me and it is important that you share all of the details here with me today. I also want to make sure that you saw in Sample University's policy that they have an amnesty clause. That means that no one will get in trouble here for sharing that they were, for example, taking an illegal substance at the time of these events, because the most important thing here is for everyone to be as honest and thorough as possible.

This is simply your opportunity to share your recollection of events.

Throughout today's interview, I may be asking you for the names and contact information of certain individuals who may be able to shed some light on the situation. You should provide me with a list of any and all witnesses whom you think may have relevant information. I also may be asking you to send me certain pieces of evidence that may be mentioned. Please forward to me any and all evidence that you think could possibly be relevant or that I request. I will try to keep a running list throughout this interview of the names and evidence that we come up with, you may want to do the same.

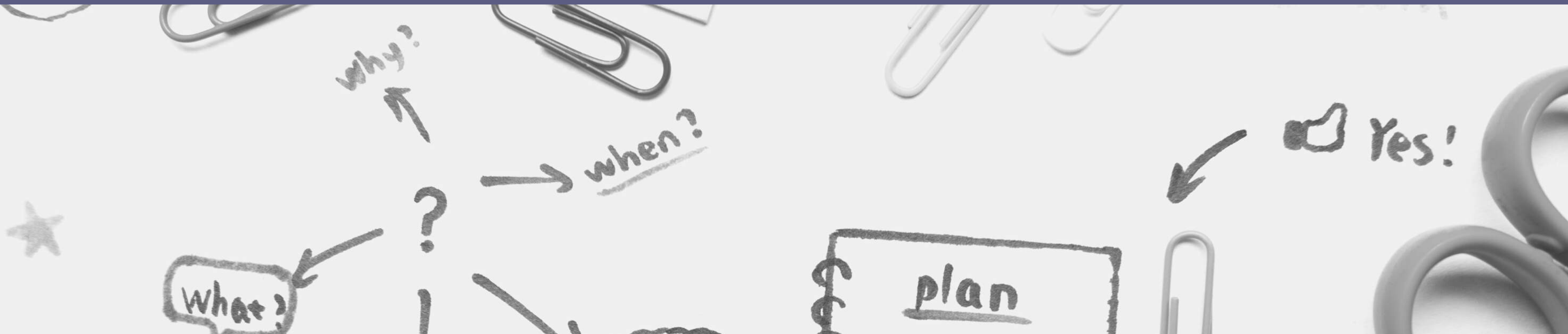
Of course, please let me know if you need to take a break at any point during this interview. If you forget to tell me something today, you have my contact information from our previous email. We can always set up another conversation or you can simply email me a quick question if you prefer.

Jordan, do you have any questions for me at this point?

ROLE OF THE ADVISOR

I would like to remind the Advisor in the room that during this interview, your role is to provide emotional support and private consultation. You may speak privately to your Advisee, but you are not permitted to directly participate in this interview, make a presentation or represent your advisee during this interview, or speak on your party's behalf during the interview. Please refrain from speaking to me until you are invited to do so. If you would like a break to discuss anything with your party in greater detail, please let me know. You can find the full description of the Advisor's role on page 10 of the Sample University Sexual Misconduct Policy (Policy 237).

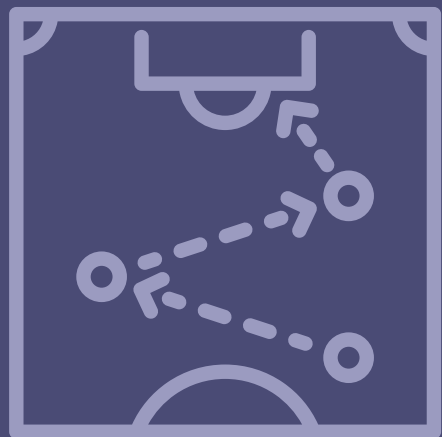
Preparing the Interview Playbook



Script vs Playbook



- A script may seem rigid and inflexible.
- It doesn't allow us to take new turns if information pulls us in a new direction.



- Instead, let's think of a coach's playbook.
- A playbook consists of various options, plans, and contingencies should we need to mix things up mid-game.
- It allows us to react, adapt, and reassess frequently.

Interviews rarely look like this:



And more frequently look like this:

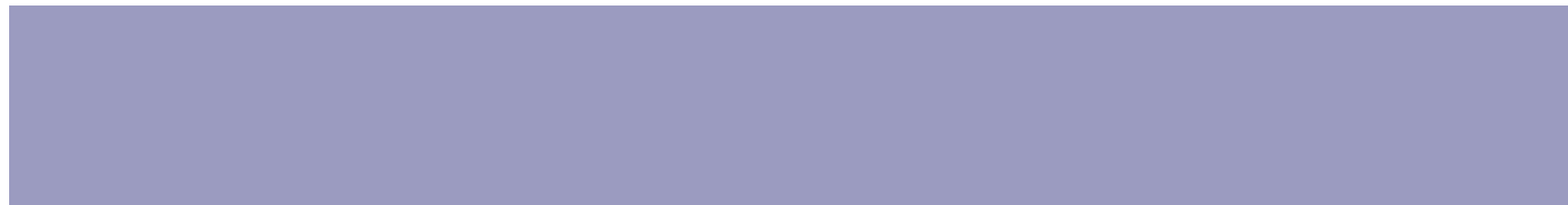




Our job as Title IX Investigators is to ask all of this:



Then pare the information collected down by fairly summarizing relevant evidence to this:

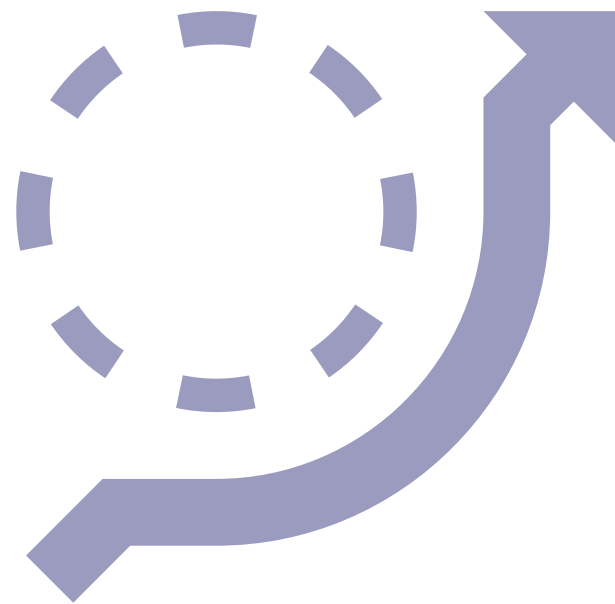


In hopes that, at the Title IX decision-making stage, the Title IX Decision-Makers and Parties only have to focus on this:



Anticipating the Obstacles

Every interview will need to be tailored to the person we're speaking with. Knowing the potential for variation, it is likely we'll encounter obstacles. Let's think of how we might reduce challenges faced by coming up with a plan.



What obstacles can you foresee in conducting investigative interviews?

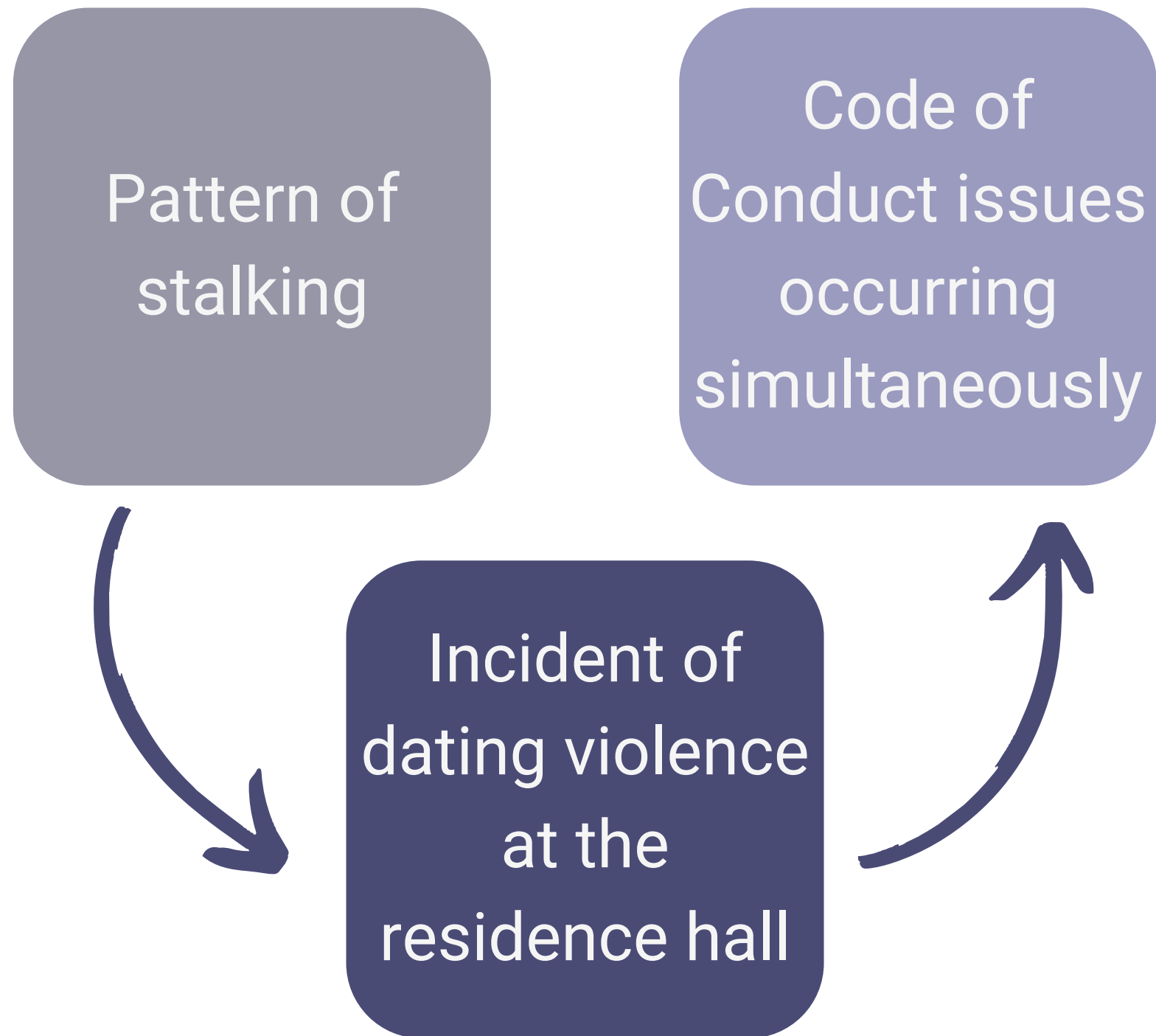
Ordering Your Questions

Option 1: Chronology-based Interview

- Conducted in the order of events



Ordering Your Questions



Option Two: Allegation-based interview

- Conducted according to themes or topics (allegations, locations, Parties, etc.)
- May jump from date to date
- Can allow for organization of the investigative report according to each allegation
- May help Parties think through each separate allegation
- May be helpful for incidents with multiple allegations over a long period of time (*For example- Quid Pro Quo harassment with an allegations of stalking in multiple locations*) or incidents with multiple Complainants and/or Respondents (*For example- Walking through allegations by each involved person*)

Quick Tips

- More information is always better
 - It is easier to pare down than to move forward with incomplete information
- Let your future investigative report be your guide
 - Think through the sections you need to complete and ensure you will have the information needed to do so
 - A thorough investigation means easier report writing
- Measure twice, cut once (prepare and be twice as thorough to reduce number of interviews)

Crafting Sound Title IX Interview Questions



Seek the most complete answers to these questions:

Who?

What?

When?

Where?

How?

Is why
important?



How can we uncover if the alleged conduct occurred or did not occur?



What questions will get the most complete set of facts to the Decision-Maker so they might make a determination regarding responsibility?



Who has this information?

Guidelines for Good Questions

Open-ended

Prompt the Party to share more broadly.

Non-leading

Do not guide the Party to the answer you want to hear.

Singular

Avoid complicated, multi-part questions.

Clear

Ensure questions use the most clear, concise language aimed at arriving at the information needed.

Sensitive

Consider emotions that may be evoked by asking certain questions. Practice empathic questioning.

Open-ended

Prompt the Party to share more broadly.

✘ Yes/No questions

✔ Tell me more about...

Walk me through your day...

Start from the beginning...

Non-leading



Do not guide the Party to the answer you want to hear.

- ✘ That must have made you pretty mad, right?
- ✔ How did that make you feel?
- ✘ How drunk was she?
- ✔ What did you observe about her behavior?



Singular

Avoid
complicated,
multi-part
questions.

-  How did that make you feel...and what impact did it have on your academics, your participation in band, and your friendships?
-  How did that make you feel?
What impact did it have on your academics?
How did it impact your participation in the band?
How did it show up in your friendships?

Clear

Ensure questions use the most clear, concise language aimed at arriving at the information needed.

- ✘ Personal narratives
- ✘ Complex legal jargon

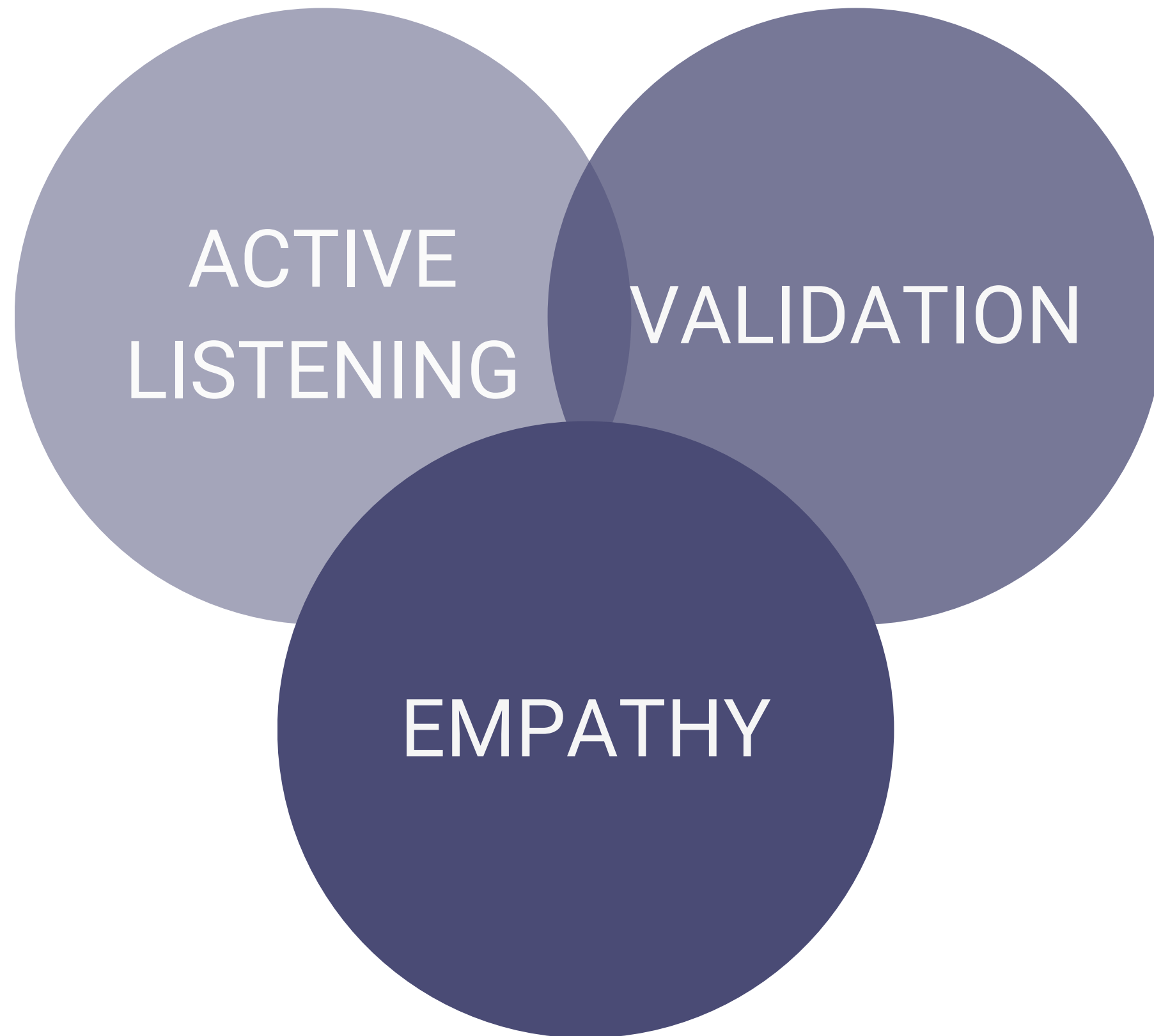


Sensitive

Consider emotions that may be evoked by asking certain questions. Practice empathic questioning.

- ✘ Judging questions
- ✘ Trick questions

Foundations of a Trauma-Informed Approach



Empathy

- The ability to understand and share the feelings of another
 - Doesn't mean that you fully "get it" – because you don't
 - You can try to put yourself in your party's shoes

Communicating Empathy

“I can see how frustrating this is for you to talk about.”

“That sounds incredibly scary.”

“There are resources here on campus to support you through this.”

Validation

Recognition or affirmation that a person or their feelings, opinions, and experiences are real or worthwhile.

DO

Share your own similar reactions, if you have them:

"I would feel really angry too."

"It makes sense that you would feel that way."

DON'T

Tell someone how they should feel:

"You shouldn't let this bother you so much."

Question their responses:

"Are you sure that is what happened?"

Validation ≠ Agreement

Active Listening

Strategies for Active Listening

- Avoid distractions
 - Cell phones, emails, knocks on the door
- Use frequent brief paraphrases of what you heard
- Use nonverbal cues
 - Nodding, smiling or frowning, leaning forward
- Remain neutral and nonjudgmental
- Use phrases to communicate your desire to understand:
 - *“Did I understand that correctly?”*
 - *“I want to make sure I am hearing you.”*
- Ask open-ended questions:
 - *“Can you tell me more about...”*



Conducting
Title IX
Interviews
Workshopping

IN THIS CHAPTER



BUILDING RAPPORT
AND TRUST



QUESTIONING THE
PARTIES

Building Rapport and Trust



Setting the Stage



Introductory email



Location



Supplies

Starting the Interview

- Read the preamble
- Explain the investigative process at the beginning of the interview
- Use non-threatening questions help to put the interviewee at ease

Important Reminders

- This is an interview not an interrogation!
- Respondents should be treated with the same respect as the Complainant
- School must presume that Respondent is not responsible for the alleged conduct unless and until a determination of responsibility for a violation of the sexual misconduct policy is made at the conclusion of the grievance process
 - This should be a guiding principle throughout the interview process (and beyond)
- Good cop/bad cop does not work

Embracing our Cultural Differences



- Be strong in your neutrality
- Don't be shy about asking questions
- Recognize and explore the witnesses' implicit biases and how that may be coloring their perceptions

Questioning the Parties

A word cloud of question words. The words are arranged in a roughly triangular shape, with 'WHAT?' being the largest and most prominent word in the center. Other words include 'WHY?', 'WHERE?', 'WHEN?', 'WHO?', 'HOW?', and 'WHICH?'. The words are in various sizes and orientations, creating a dynamic visual effect.

Foundations of Interviewing

Seeking the Narrative

Controlling the Interview Flow

Asking Clarifying Questions

Providing Rationale for Questions

Gathering Information to Support Answers

Seeking the Narrative

- Your first broad question

"Tell me what happened on the night of August 15, 2022."

"Start at the beginning and tell me what's been going on."

- This may elicit a long-form response
 - Listen carefully to determine which clarifying questions you would like to ask
 - Allow the party to speak, uninterrupted
 - The party may go through a range of emotions
- Allow yourself a way to bring the conversation back

Controlling the Interview Flow

We discussed chronology-based vs. topic-based interviews, but you'll also want to think about:

- Pacing of questions
- Escalation of questions
- Length of interview
- Managing emotions
- Taking breaks or resetting the tone

Asking Clarifying Questions

Ask for specificity

- Encourage Parties to be as descriptive as possible
 - Sense questions
 - Feelings and emotions experienced
 - Physical actions
 - Full names of individuals mentioned, contact information, relationships
 - Locations, times, dates
 - Quantities of substances consumed



When in doubt, use the phrase, "Tell me more about that..."

This simple prompt allows the Party to dig deeper and recall on their own.

Asking Clarifying Questions

Example

"We started the night at a bar downtown. I can't remember which one. And he started buying me drinks. I got really drunk."

Asking Clarifying Questions

"We started the night at a bar downtown. I can't remember which one. And he started buying me drinks. I got really drunk."

Example

What time did you arrive at the bar?

How did you get there?

Can you describe the area?

Had you been to this bar before?

What did the inside of the bar look like?

What types of drinks did he purchase for you?

How many total drinks did you consume?

Did you observe him drinking any alcoholic drinks?



Let's talk about the skill of discussing intimate details.

Ask Clarifying Questions

Example

"When I woke up, he was doing stuff to me. I didn't want that to happen, and I never said it was ok. I barely even know him."

Ask Clarifying Questions

"When I woke up, he was doing stuff to me. I didn't want that to happen, and I never said it was ok. I barely even know him."

Example

I know this may be difficult or uncomfortable, but I need to understand the specifics of what he was doing to you. This will help me when I'm writing the report and we are providing your narrative of the events. You can use the terms you feel comfortable using. Can you tell me what he was doing?

Asking Clarifying Questions

Example

"He was having sex with me."

Ask Clarifying Questions

"He was having sex with me."

Example

Sometimes sex has different definitions to different people. I just want to be sure I am understanding your definition of sex. Can you tell me exactly what acts he was engaging in?

Asking Clarifying Questions

Example

"Yes. First, he fingered me and then started going down on me. Then he penetrated me vaginally with his penis. I told him no, but he just kept going until he got off. I didn't want any of that. I never even wanted to kiss him."

Providing Rationale for Questions

- Some questions may sound as though they are victim-blaming or shaming without an explanation
 - Help the Party understand why you are seeking this information
- "Why" questions are seen as taboo, but there are times we may need to ask them
 - Explain the need to ask "why" questions



Providing Rationale for Questions

Instead of:

What were you wearing that night?

Which may be met with:

"Are you saying I deserved this because I was in a little dress? That's exactly what my friends said. I knew I shouldn't have worn that."

Example

Try:

The security system in Oakley Hall recorded a large group returning to the residence hall that night at 1:30 AM. The footage is a little grainy. Could you give me a description of what you were wearing so I can better identify you on the video? Could you describe what Tristan was wearing as well?

Providing Rationale for Questions

Example

Instead of:

Why did you go into her room?

Which may be met with:

"See, I knew you would think I was stupid for going in there alone. I guess I just wasn't thinking."

Try:

What was your mindset when she invited you into her room? Walk me through what you were thinking and feeling so I can understand your decision to accept her invitation.

Gathering Information to Support Answers

- Attempt to go one layer deeper
- Seek information that will support or refute certain elements of the allegations



Consent



Incapacitation
(Due to alcohol or
other substances)



Elements of
the potential
policy violation

Gathering Information to Support Answers

Example

Establishing Consent:

(To Respondent) What verbal or non-verbal cues did he give you to indicate he wanted to have sex?

"I don't know. He didn't say anything when I moved on top of him, so I figured he wanted it. He would have said no or moved away otherwise."

(To Complainant) What was your reaction when you woke up and discovered him on top of you?

"I completely froze. I tried to speak, but I couldn't. I wanted to push him off of me, but it is like my body wasn't listening to my brain. I think I was in shock. I didn't do anything."

Gathering Information to Support Answers

Intoxication/Incapacitation:

(To Respondent) Can you tell me about her how she was acting and what you observed that led you to believe she was not incapacitated?

Example

"She seemed completely normal. On the bus back from the event, she had a long conversation with my buddy Jace. She got off the bus without any help and was giving everyone hugs before we got in my car to go to the dorm. She sang to the radio and made TikToks the whole way home."

Gathering Information to Support Answers

Elements of a Policy Violation:

Policy Language

Stalking: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to (1) fear for the person's safety or the safety of others; or (2) suffer substantial emotional distress.

Example

Can you tell me the number of times the Respondent came to your campus office uninvited during the month of March?

"She came to my office about three times a day, every single day. I didn't even know she knew where I worked. My supervisor finally told her to stop because she was starting to become a disruption."

Gathering Information to Support Answers

Example

Can you tell me the frequency and content of the text messages sent by the Respondent during that same week?

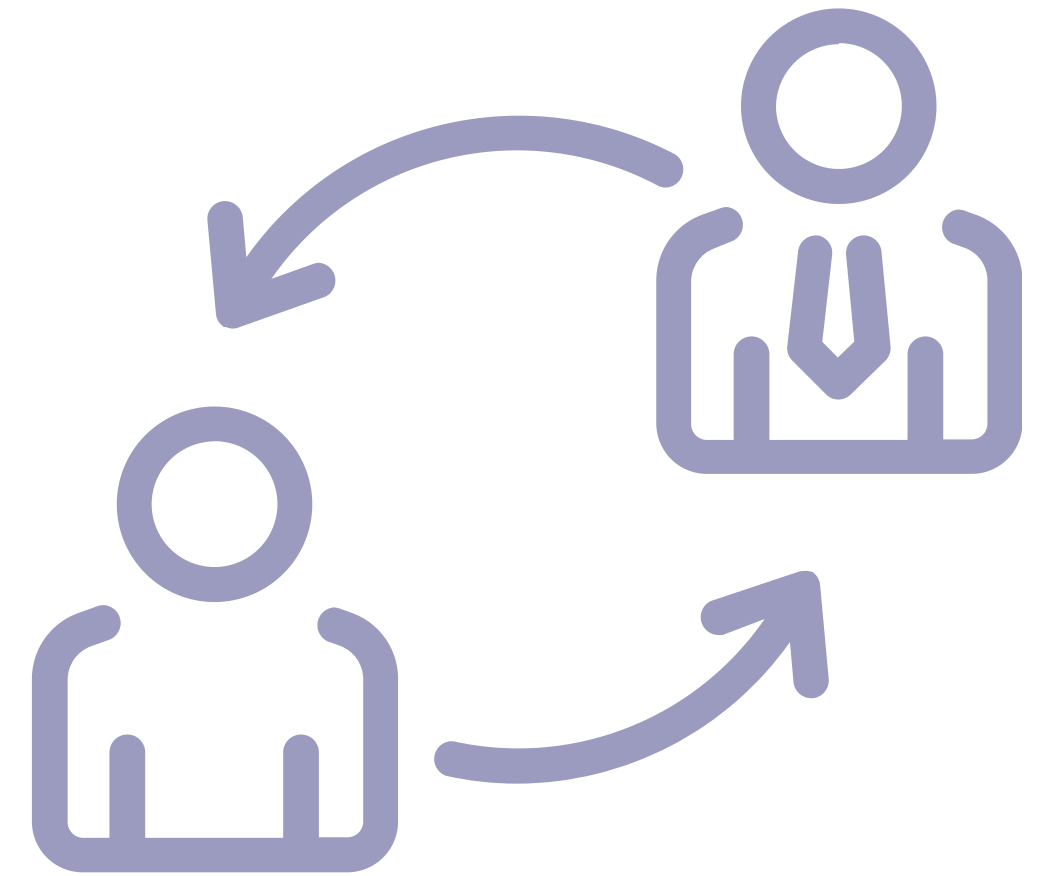
"I think I counted over 450 text messages from her. They came at all hours of the day, asking to meet up for sex and saying she would make sure my girlfriend was out of the picture. I eventually had to block her."

Policy Language

Stalking: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to (1) fear for the person's safety or the safety of others; or (2) suffer substantial emotional distress.

Advisors

- As an Investigator, it is your job to maintain authority in the room
- The role of the Advisor is for emotional support and private consultation
- Do not allow the Advisor to speak on behalf of the Party as this is the Party's interview, and you need to hear their story from them



Closing the Interview



Thank the Party for their participation and willingness to speak openly regarding the allegations



Ensure the Party has asked any questions they may have



Provide a timeline or next steps, as well as contact information



Close any loops, so the Party has a clear understanding of what is to come and what options are available to them at this point in the process

Final Questions and Statements

This is much like the preamble, but involves standard closing practices or statements

- "Is there anything else you think I should know?"
- "Let's review the information that you are going to send to me."
- "Are there any additional witnesses?"
- "Are there social media posts or messages?"
- "Is there any additional evidence you think could be relevant?"
- "Is there anything else that pops into your mind?"
- "We can meet again, or you may just email me."
- "I will try to keep you posted every couple of weeks."
- "I will do my best to wrap this up efficiently, but I do want to be thorough."
- "Feel free to reach out with questions, or contact the Title IX Coordinator."

Circling Back

- Do not be afraid to re-interview a Party or witness if you require more information
- Make your contact information available to interviewees
- After completing your first round of interviews, you may become aware of new witnesses
- Promptly contact and schedule interviews with those witnesses
- Keep the Parties updated, simultaneously



Let's role play with the
Complainant and Respondent



Preparing the Investigation Report and File

In This Session



ELEMENTS OF THE
INVESTIGATION
REPORT



SUMMARIZING
INTERVIEWS



SUMMARIZING
EVIDENCE



REVIEWING THE
REPORT



THE INVESTIGATION
FILE



SAMPLE REPORTS

Report Writing Preparation and Helpful Hints

- You might consider writing as you go
- You may see questions you forgot to ask or points that need clarification - go back and ask
- Carve out the necessary time

Elements of the Investigation Report



Investigation Report Requirements

At the conclusion of the investigation, the investigator will prepare a written report which will:

- ✓ Identify the allegations
- ✓ Identify relevant policies, guidelines, and other standards
- ✓ Explain the PROCEDURAL STEPS taken between receipt of the formal complaint and the conclusion of the investigation
- ✓ Fairly summarize relevant evidence

Elements of the Investigation Report

Allegations Investigated

Allegations, if proved, that meet the definition of Sexual Misconduct

- *Should be roughly identified in the Formal Complaint*

Alleged form(s) of sexual misconduct

- *Sexual Harassment, Dating Violence, Domestic Violence, Sexual Assault, Stalking*

Many forms of prohibited conduct are also dependent upon factors such as consent, length or type of relationship between the Parties, number of alleged incidents, etc.

Elements of the Investigation Report

Allegations Investigated

Allegations, if proved, that DO NOT meet the definition of Sexual Misconduct

- *Other policies implicated?*
- *Harassment not based on sex or gender*
- *Sexual misconduct that does not fall under Title IX's scope, but may need to be addressed under another policy*

Elements of the Investigation Report

Relevant Policies, Procedures, Guidelines and Standards



Sexual
Misconduct
Policy



Additional
Relevant
Institutional
Policies

Elements of the Investigation Report

Procedural Steps Taken Between Receipt of Formal Complaint and Conclusion of Investigation

Timeline

- The importance of documentation during the interviewing process presents here
- Investigator should utilize communication logs, activity logs, or other templates that document your information-gathering timeline
- The following should be provided:
 - Dates of notices
 - Interview dates
 - Date of provision of investigation file
 - Dates of responses to investigation file, etc.

Elements of the Investigation Report

Procedural Steps Taken Between Receipt of Formal Complaint and Conclusion of Investigation

- Thoroughness is key
- Document if a Party or Witness does not respond or declines to participate in the investigation
- Document communication with other departments or off-campus sources (i.e., local police)
- Document supportive measures in place during the investigation (Work with Title IX Coordinator to obtain this information)



Does your Title IX office utilize a case management system?

Elements of the Investigation Report

Summary of Relevant Evidence

Summary should include:

- Summaries of interviews with Complainant, Respondent, and witnesses
- Summaries of evidence, with exhibits attached
 - Reference the evidence log and appendix which should contain relevant information collected, including any evidence obtained or submitted as part of the investigation, electronic records, written statements, photographs, or other documentation

Elements of the Investigation Report

REMINDER

The written report shall not make findings of facts or conclusions regarding the application of facts to this policy.

This is the responsibility of the Decision-Maker.

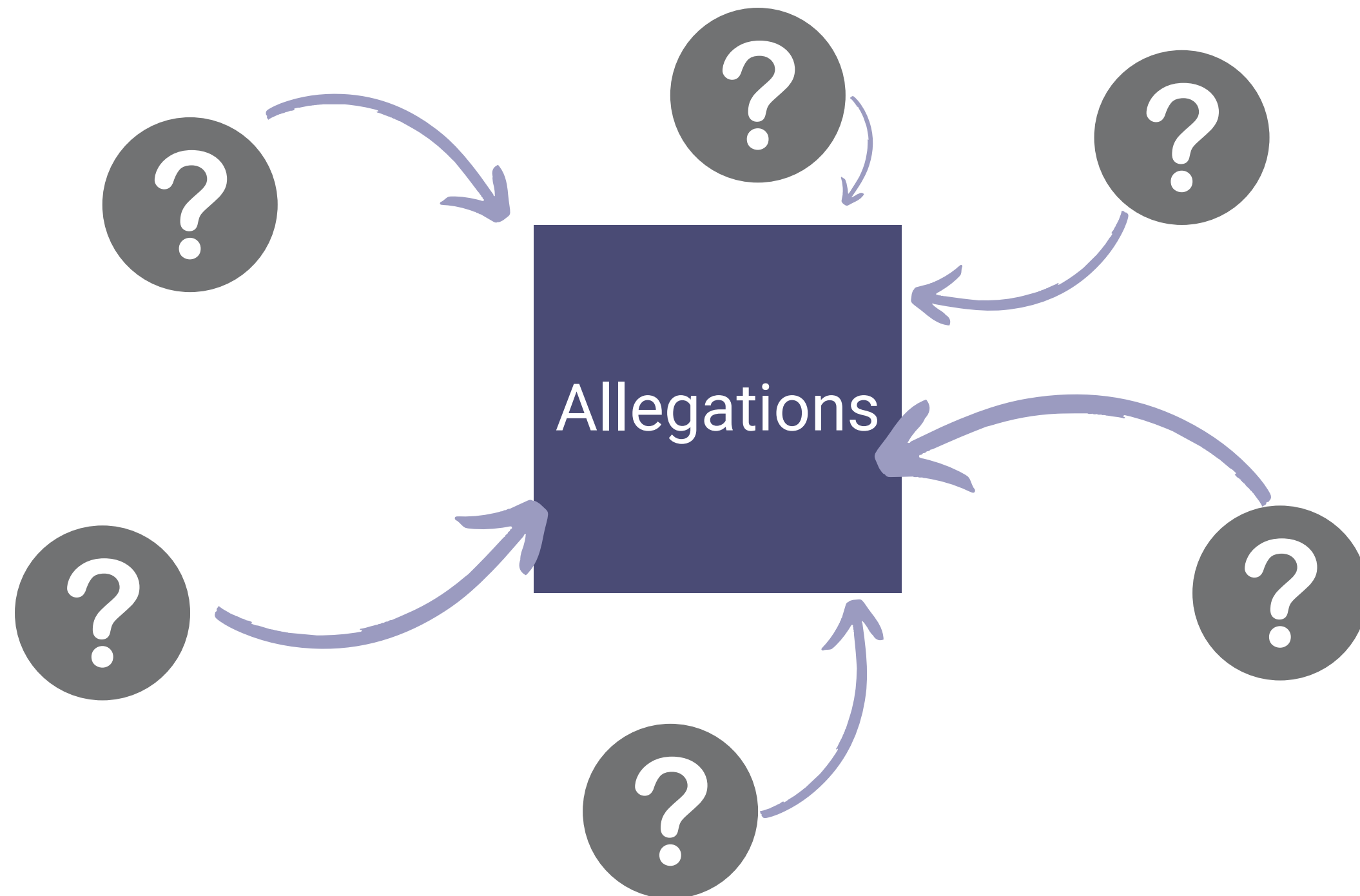
Elements of the Investigation Report

A presentation of facts and analysis of consistencies and inconsistencies in the information collected

**Optional to include*

Interview Summaries

Information in the summaries must be relevant:



Directly Related vs. Relevant

Neither term is explicitly defined in the Title IX Regulations.

Directly Related

Evidence that is connected to the complaint but **does not** tend to prove or tend to disprove the complaint or allegations.

Example: The flyer announcing the celebratory dinner the night of the encounter

Relevant

Evidence that is connected to the complaint or allegations that would make a disputed fact more or less probable.

Example: Video from the hallway outside the main office showing Alex as she left.

Not directly related or relevant: Learning the Complainant purchased popcorn, while the Respondent opted for candy.

What is Never Relevant Under Title IX?

As outlined in the Title IX Regulations, the following evidence is NEVER relevant:

- "Evidence about a Complainant's prior sexual behavior, except when:
 - Questions and evidence are offered to prove someone other than Respondent committed alleged conduct;" or

CAN WE GO DOWN THIS PATH?

"Alex has dated, and slept with like half of the string ensemble. The whole campus knows. They'll all tell you Alex is a slut."

What is Never Relevant Under Title IX?

As outlined in the Title IX Regulations, the following evidence is NEVER relevant:

- "Evidence about a Complainant's prior sexual behavior, except when:
 - Questions and evidence concerning specific incidents of the Complainant's prior sexual behavior **with respect to the Respondent are offered to prove consent.**"

CAN WE GO DOWN THIS PATH?

"We have a safe word during sex. I have an entire email thread about it. We agreed that if we weren't comfortable with something, we would say the word. They never said the word that night and they have every single time we've engaged in something they're not comfortable with. How else would I know that wasn't ok?"

Note: The same rules do not apply to the sexual predisposition or history of the Respondent

What is Never Relevant Under Title IX?

Additionally, "a school's grievance process must not use, rely on, or seek disclosure of information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege."

EXAMPLES:

- Medical records
- Academic records protected under FERPA
- Conversations with privileged individuals such as counselors or clergy

Your report will contain only

RELEVANT

information.

Summarizing Interviews



Summarizing Interviews

Stay FOCUSED when summarizing interviews.

- Key questions for the Title IX grievance process:
 - Did the alleged incident occur?
 - Is the alleged incident a policy violation?

STEP

1

Identities
and
Dates

Note time, date, location of interview, and if an Advisor was present

- Explain the interviewee's relation to the case
 - Complainant, Respondent
 - If a witness, who are they?
 - Example: *“Joshua Kaplan was the person working the front door of Briggs Hall on the night of March 3.”*

STEP

2

Summary
of
Responses

Tell the Story

Transform the individual's responses into
a coherent narrative

STEP

2

Summary
of
Responses

Include direct quotes from the individuals

- Direct quotes are extremely powerful and useful for those reading the report
- Cite direct quotes either from the specific line in the transcript or timing of the recording (annotate footnotes or endnotes)

STEP

2

Summary
of
Responses

Organize interviews into sub-sections when dealing with multiple allegations

- If a formal complaint alleges multiple policy violations or forms of sexual misconduct, consider organizing the interview into sub-sections related to each policy violation



Example: Relationship with a history of dating violence and sexual assault

STEP

3

Interview
Observations

OPTIONAL (But be consistent across Parties)

- Did the individual ask for a break?
 - Note how many breaks
- Was the individual accompanied by an Advisor?
- Did the Advisor attempt to speak on the individual's behalf?
 - What occurred?
 - Only include if noteworthy
- Did the individual bring any evidence to the interview?
 - What was brought?
 - How was it presented?

STEP

4

Share
Interview
Summary?

- Summaries of interviews are a presentation of the individual's statements and do not include the Investigator's analysis, assessments, etc.
- Some Investigators share the summary of interview with the individual as soon as available to ensure accuracy of note-taking or transcription

Summarizing Evidence



Examples of Summarizing Evidence

May simply be a list of all evidence, referencing its Appendix Number.

VIII. Table of Appendices

Documents and evidence obtained during the course of the investigation such as the formal complaints and Notices of Investigation can be found in the attached Appendices.

Additionally, each investigative interview was recorded by Investigator Chapman with the consent of the interviewee. The transcripts of each interview can also be found in the attached Appendices.

A list of Appendices is as follows:

Appendix No.	Description	Date Received
Appendix A	Jacob Smith Formal Complaint to the Title IX Coordinator	January 3, 2022
Appendix B	Amanda Parsons Formal Complaint to the Title IX Coordinator	January 4, 2022
Appendix C	Jacob Smith Email to the Title IX Coordinator with additional allegations	January 6, 2022
Appendix D	Notice of Allegations to Smith - Complainant	January 7, 2022
Appendix E	Notice of Allegations to Parsons - Complainant	January 7, 2022
Appendix F	Notice of Allegations to Thompson – Respondent	January 7, 2022
Appendix G	Smith Interview Transcript	January 9, 2022
Appendix G.1	Smith Interview Recording	January 9, 2022

Examples of Summarizing Evidence

You may also decide that specific pieces of evidence require an explanation.

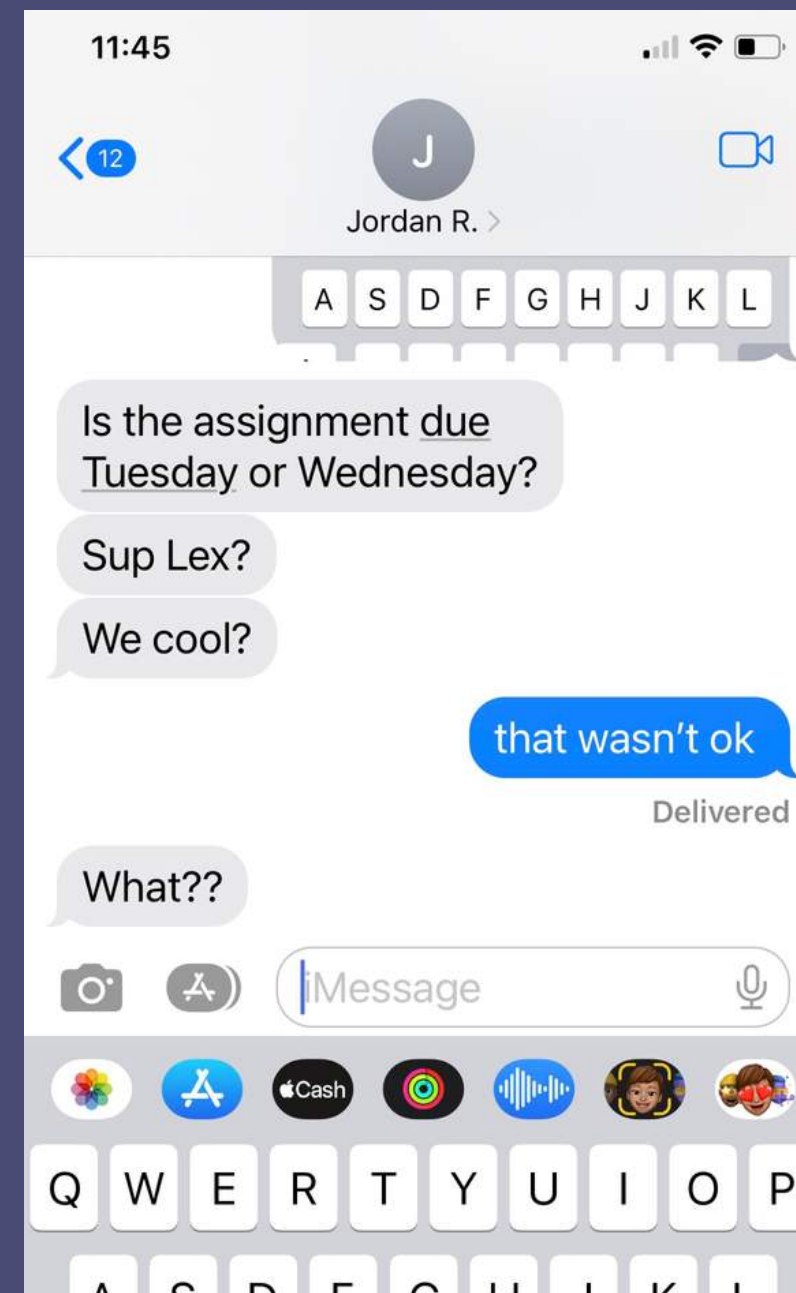


Example: Security camera video recording from Briggs Hall timestamped from March 3, 2023 at 6:45 PM to March 3, 2023 at 11:59 pm..

Security camera video recording was obtained from Sample University Police Department (SUPD)

Saved as SUPD_Evidence_2.mp4 in Investigation File

Still image from 00:18:14 Attached to Investigation Report as Appendix K



Example: Screenshot of text message received by Complainant Alex Baker timestamped on March 4, 2023 alleged to have been sent by Respondent Jordan Reynolds. Screenshot was provided by Complainant Baker.

Saved as Baker_Evidence_1.png in Investigation File

Attached to Investigation Report as Appendix H

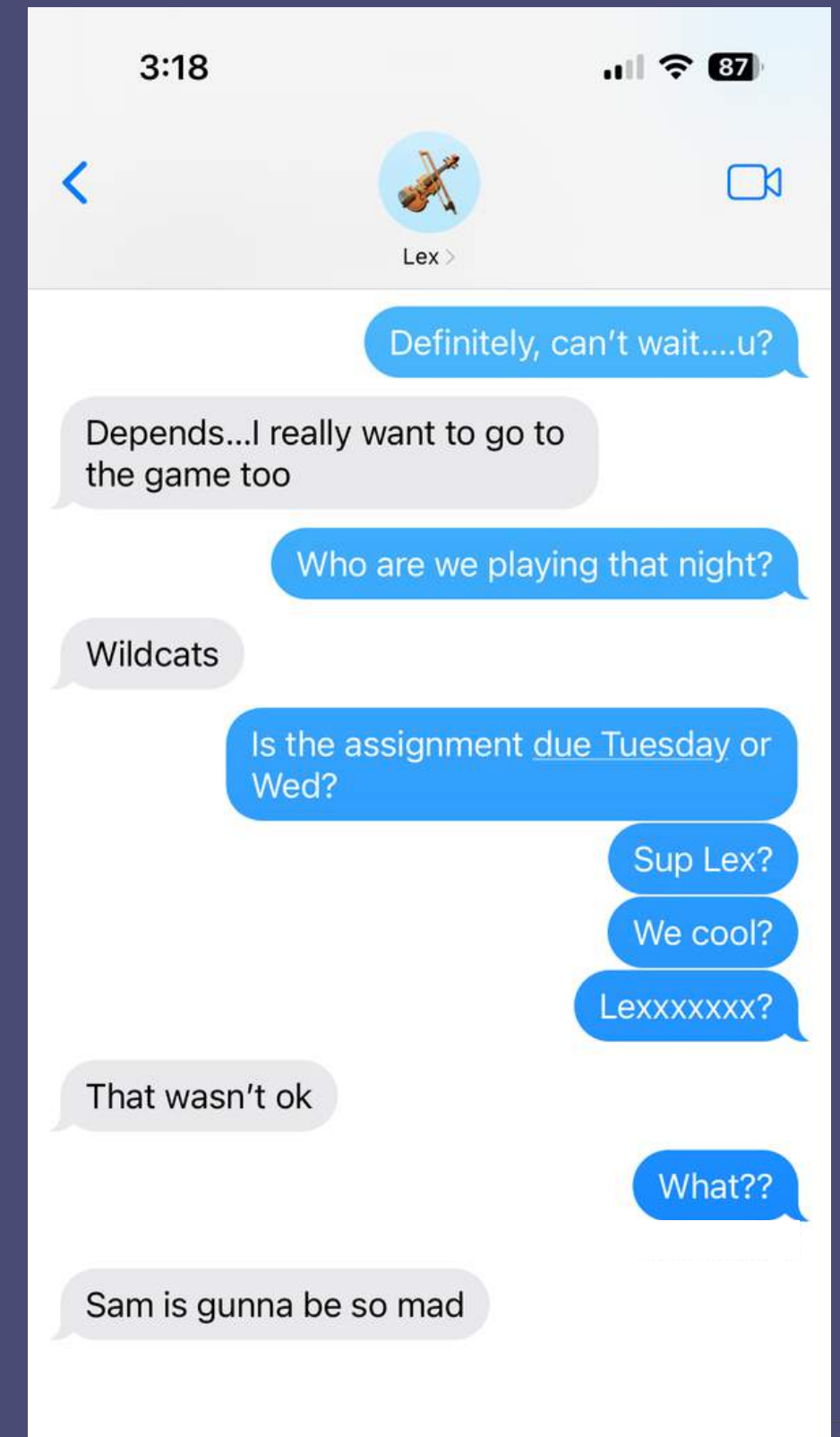
Examples of Summarizing Evidence

Noting Inconsistencies

Example: Screenshot of text message exchange alleged to be between Complainant Alex Baker and Respondent Jordan Reynolds on March 4, 2023 timestamped at 8:07 AM. This screenshot was provided by Jordan.

NOTE: There are inconsistencies between the messages displayed on the screenshot of the exchange provided by Alex (Appendix F) and the screenshot provided by Jordan. (Appendix K)

The screenshot provided by Alex contains the same initial text messages between the two but does not include the final text message from the Alex stating, "Sam is gunna be so mad."



Reviewing the Report



Keep in Mind

Who, What, When, Where, Why, and How

- As you review your investigation report, ask yourself if your investigation answers these questions
- Your summaries of interview and evidence should address these questions:

Who was involved?

What are the allegations?

Where and when did the incident occur?

Why and how did the incident occur?

Keep in Mind

It may not be possible to definitively answer the questions, but you should provide the individuals' responses to the questions.

- Complainant states that the incident occurred at 10:15 PM on Friday, March 3
- Respondent states that the incident occurred at 9:00 pm on Friday March 3
- Access logs to the campus building where the incident occurred show that the Complainant swiped in to access the Music Dept office at 8:55 PM

Next Steps



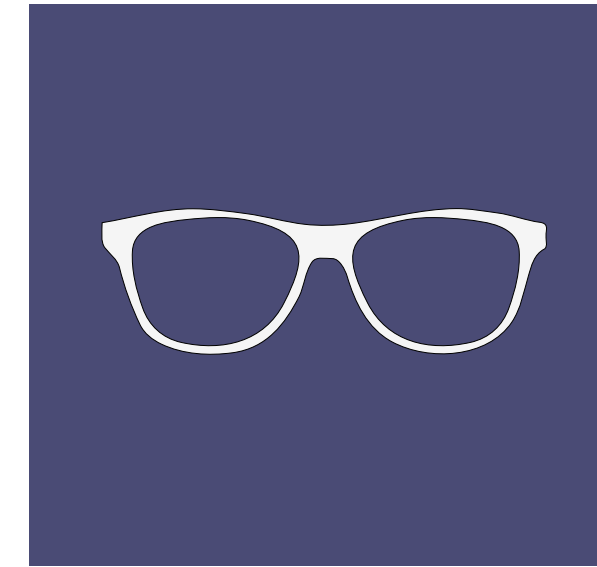
EDIT



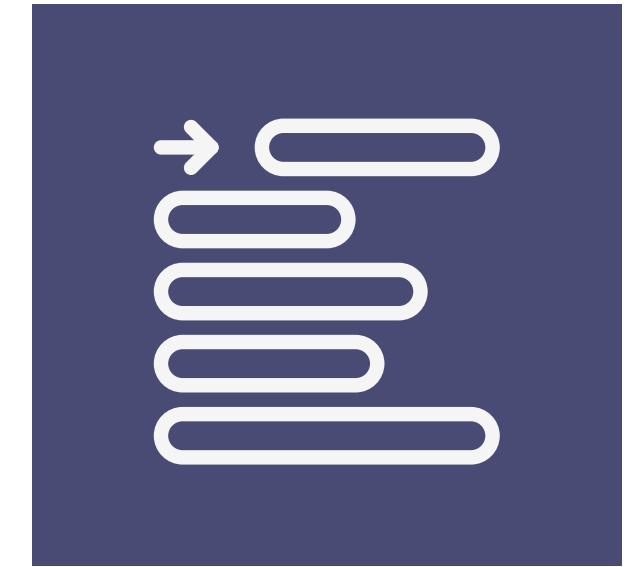
PROOFREAD



PRINT



PROOFREAD
AGAIN

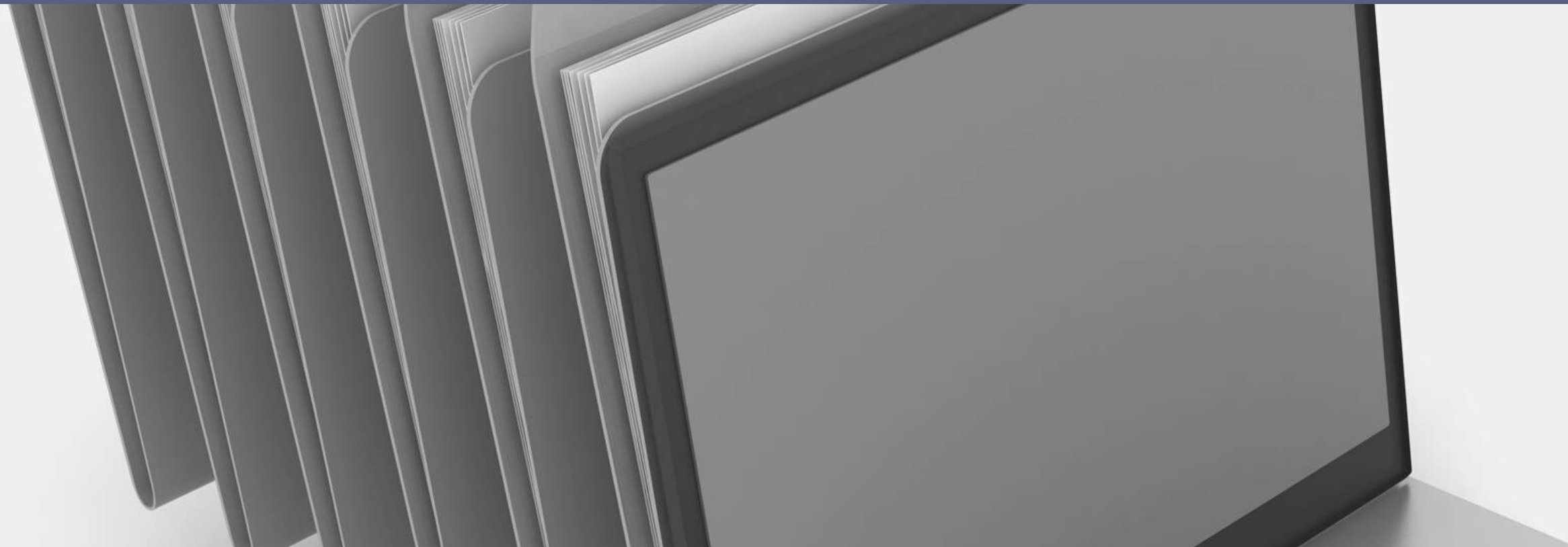


FORMAT



Pronouns - Use as few as possible, but ensure the ones you use are accurate. Too many "he", "she", and "they" pronouns can become confusing to the reader.

The Investigation File



What is the Investigation File?

At the conclusion of the investigation, prepare what we refer to as an investigation file:

- May also be referred to as a case file or case binder
- May be a hard copy or digital

What does the Investigation File contain?

ALL EVIDENCE obtained as part of the investigation that is directly related to the allegations raised in a formal complaint to the Complainant and Respondent

- Do not filter out any information from the file at this point unless completely unrelated
- Parties must have an equal opportunity to inspect and review all of the directly related evidence
 - Investigators may also send evidence to Advisors, with consent
- Includes evidence that tends to prove and disprove the allegations (inculpatory and exculpatory), whether obtained from a Party or witness

What does the Investigation File contain?

- Includes evidence that is directly related to the allegations but upon which the institution does not intend to rely in reaching a determination regarding responsibility
 - For instance, where evidence is directly related to the allegations, but the investigator does not believe the evidence to be credible and thus does not intend to rely on it
- All evidence must be made available to the parties, but not all evidence may be “relevant”
 - Reviewing the investigation file provides the Advisor and the party the opportunity to argue whether certain evidence is relevant or not

Relevant vs. Directly Related

Directly related evidence is a broader term than relevant evidence. All directly related evidence is included in the investigation file. Only relevant evidence, however, is summarized in the investigation report.

Directly
related

Relevant

What is never relevant under Title IX?

As written into the Title IX Regulations, the following evidence is **NEVER** relevant:

- Evidence about a Complainant's sexual predisposition
- Evidence about a Complainant's prior sexual behavior, except when:
 - Questions and evidence are offered to prove someone other than Respondent committed alleged conduct; or
 - Questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent are offered to prove consent.

EXAMPLE: "He and his ex-girlfriend were into some weird stuff, so it is no surprise that she found herself in that position."

Once the Investigation File is Prepared

- Title IX Coordinator will provide the file to the Complainant, Respondent, and Advisors
- School must provide at least 10 calendar days for the Parties to respond to the evidence
- Investigators will share any written response with the other Party and will consider any written response prior to completing the investigation report



The audience for the Investigation File is the Complainant, Respondent, Advisors, and Decision-Maker(s).

After Parties Review the Investigation File

Create the final investigation report:

- Incorporate relevant elements of the Parties' written responses (or absence thereof) into the investigation report
- Include any additional relevant evidence
- Make any necessary revisions
- Finalize the report
- Document all rationales for changes made after the review and comment period

Elements of the Investigation File



Generally, the investigation file should contain the following elements:

Table of Contents

1

- Organized for quick reference as the files can become large
- Separated into major sections and even subsections, if necessary, to help parties, Advisors, and Decision-Maker locate key information

Investigation Report



- Will not be finalized until the Parties and Advisors review and respond within the required 10 day review period
- Includes allegations, relevant policies/guidelines and other standards, procedural steps; and
- Fairly summarizes relevant evidence
 - Summaries of Interview (summary for every interview conducted)
 - Summaries of Evidence

List of Parties Interviewed and Evidence Submitted



- Communications log
- Evidence log

Witness Interviews



- If interviews are recorded, each interview should have the following documentation:
 - Transcript of interview
 - Recording of interview (if available)

Appendices

5

- Contains relevant documentary and physical evidence
 - Examples: electronic records, written statements, photographs, surveillance video, copies of text messages or emails, snapchats, restraining orders, or other documentation
- Evidence should be catalogued and organized into appendices with numbers or letters corresponding to the line in the evidence log
 - Save for the final task

Sample Reports



Contents

I. ALLEGATIONS

II. IMPLICATED POLICY

III. STANDARD OF PROOF

IV. PRESUMPTION OF NON-RESPONSIBILITY

V. PROCEDURAL STEPS AND INVESTIGATION
TIMELINE

A. CASE PROGRESSION

B. LIST OF INTERVIEWS

VI. SUMMARY

VII. EVIDENCE

VIII. APPENDIX

I. ALLEGATIONS:

The following was alleged in the Sample University Notice of Investigation and Allegation (NOAI) (Appendix A):

“The alleged actions include Respondent Jordan Reynolds engaging in unwanted sexual contact through putting their hand inside the Complainant’s Alex Baker's underwear without Alex's consent. Respondent also allegedly kissed Complainant’s neck without Alex's consent while holding Alex's arms down to Alex's side. This allegedly occurred while in the Music Department Office located in Briggs Hall.

This is alleged to have occurred on the evening of March 3, 2023 following a Sample University Music Department sponsored event.

II. IMPLICATED POLICY

The Complaint was filed alleging the following the Sample University Sexual Sexual Harassment Policy, SU Policy 237 (hereinafter referred to as “the Policy”), and section was violated:

Then cite the specific policy and sections and definitions.

PROHIBITED CONDUCT:

- Allegation/Incident 1: Section B. Sexual Misconduct
- Sexual Assault- Sexual assault defined in 20 U.S.C. 1092(f)(6)(A)(v), is an offense classified as a forcible or non-forcible sex offense

Sections III(A) and III(C) of The Policy provides its definition and examples of consent, as follows:

Consent: Lack of consent ...

III. STANDARD OF PROOF

The Decision-Maker shall employ the Preponderance of Evidence/Clear and Convincing Standard in evaluating the facts and circumstances of this matter, according to the Sample University Sexual Sexual Harassment Policy, SU Policy 237, Complaint Resolution Procedures. (Sec.6b)

IV. PRESUMPTION OF NOT RESPONSIBLE

Pursuant to The Policy there is a presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the investigation and resolution process.

V. PROCEDURAL STEPS AND INVESTIGATION TIMELINE

a. Case Progression

Pre-Formal Complaint

On Tuesday, March 7, 2023, Chair of the Sample University Music Department, Dr. Rhonda Logan, contacted student Alex Baker about an unexcused absence. In response, Alex informed Dr. Logan that she had been sexually assaulted by student Jordan Reynolds. Alex gave a detailed description of the events to Dr. Logan. (Appendix A)

On March 8, 2023 at 12:32 am Dr. Logan emailed Title IX Coordinator Anita Suarez alerting her to Alex's allegations. (Appendix B)

On March 8, 2023, Coordinator Suarez emailed Alex asking her if she would want to meet with her that day. Alex replied that same day that she was unavailable to meet that day but would like to meet on March 9.

On March 9, 2023 Alex met with coordinator Suarez at the Title IX office. Coordinator Suarez explained to Alex her reporting options and her rights pursuant to University Policy and Title IX. Alex said she wanted to think about whether to file a formal complaint.

On March 10, 2023, Alex submitted a formal, written and signed complaint to Coordinator Suarez.

Formal Investigation

On March 10, 2023, Alex filed a formal, written and signed Complaint with the Title IX Office. That Complaint alleged “Sexual Assault” and “Unwelcome Sexual Contact”.
(Appendix C)

On March 14, 2023, a Notice of Investigation and Allegation was sent to the ...
(Appendices D and E)

DATE	ACTION
x/x/2021	Formal written complaint filed by Complainant via email and acknowledged by Title IX Office x/x/21
x/x/2021	Title IX Coordinator held follow up with meeting with Complainant post formal written complaint to clarify and questions about the process, rights or options shared at time of initial reporting
XXXX	Notice letter issued to Complainant and Respondent via email
XXXX	Title IX Coordinator email to External Investigator with instruction to begin investigation process
XXXX	Title IX Coordinator Informed Respondent they have the right to meet to discuss rights and options
XXXX	Investigator reached out to Complainant to establish initial contact to begin scheduling initial interviews

DATE	ACTION
XXXX	Informed Parties the name of the external Investigator, Martha Collins
XXXX	Title IX Coordinator met with Respondent to share rights, options and procedural steps
XXXX	Process Delay-Investigation due to campus spring recess; Parties and Investigator Notified by Title IX Coordinator
XXXX	Title IX Coordinator informed Respondent, Complainant, and Investigator that the process (investigation phase) will continue effective this date.
XXXX	Investigator shared Draft Investigation Report with Complainant and Respondent
XXXX	Respondent emailed Investigator Response to Draft Report
XXXX	Complainant emailed Investigator Response to Draft Report

b. List of Interviews

- On March 29, 2023 and April 23, 2023 Alex Baker was interviewed via Zoom. Alex did not choose to have an Advisor present. Both interviews were recorded with Alex's consent. (Appendices D and E)
- Dr. Logan was interviewed via Zoom on March 31, 2023. The interview was recorded with Dr. Logan's consent. (Appendix H)
- Lucy Chen was interviewed via Zoom on April 8, 2023. The interview was recorded with Lucy's consent. (Appendix J)
- Etc.

VI. SUMMARY

All relevant information that was shared during the interviews of the Parties and Witnesses are contained in this report. Other information that is directly related but not deemed relevant, remain in the Investigation File but were not incorporated herein.

The following is a summary of undisputed facts:

Alex Baker is a student at Sample University. Alex is a senior, expected to graduate in December of 2023. Alex is a violinist who is a member of the honors String Quintet. Alex has known Jordan Reynolds, a senior who had been expecting to graduate in June 2023, since Fall of their Freshman year. Jordan is a percussionist and the Parties have participated in several classes and numerous performances together during the four years they have known one another...

INTERVIEW OF ALEX BAKER

The following is a summary of the relevant portions of Alex's interview:

Alex was not drinking on the night of March 4, 2023, as she does not drink alcohol as a rule. In general, Alex does not mind when others drink but she noted Jordan's inebriated state at the event because he was being "rude and inappropriate" (Appendix D, at pg 11.) When asked what she meant by "rude and inappropriate" Alex replied, "It was a formal event, sort of the culmination and recognition of all that we had accomplished. There were a lot of prestigious performers and professors at the event and it was, not exactly serious, but formal. This wasn't an after-show party where everyone kind of lets loose. I don't know why J thought it was the right time to get wasted but apparently he did and he just was making dumb, sexual jokes towards me in front of Dr. Logan and being kind of loud..."

...

VII. EVIDENCE

Alex provided the following items:

- Word document description of what occurred including most of her texts with Jordan
- Messages between herself and Lucy Chen (Appendix C)
- Messages between herself and Jordan

Jordan provided the following items:

- Snapchat screenshot (Appendix H)

Dr. Logan provided the following items:

- Email between herself and Alex

Lucy Chen provided the following items:

- Messages between herself and Alex

Sam Montgomery did not provide any physical evidence

VIII. RESPONSES TO DRAFT REPORT

On May 21, 2023 Jordan submitted a response to the Draft Report (Appendix J) requesting the investigator include the description they provided in their interview of Alex's skirt being "very tight". This was incorporated into the report.

On May 22, 2023 Alex submitted a response to the Draft Report, which suggested a number of edits. The following changes were made in response to her submission:

- The labelling of Appendix H was corrected from G to H;
- Alex first arrived on campus after Spring break, before the rest of the student body, for violin rehearsal.

IX.	Appendix
A.	Notice of Investigation and Allegations
B.	Email from Alex to Title IX Office, first reporting the allegation
C.	Formal Written Complaint of Alex attached to email to TIX Office
D.	Case Report
E.	Floor Plan of Music Office in Briggs Hall
F.	Messages between Alex and Lucy provided by Alex
G.	Messages between JaAlex and Lucy provided by Lucy
H.	Messages between Jordan and Sam provided by Jordan
I.	Respondent's Response to Draft Report
J.	Complainant's Response to Draft Report